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Ontario Royal commission inquiry into labour disputes

Hearings

v 20

April, 1967

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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

5650

HEARINGS HELD AT
TORONTO

VOL. NO.

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April 13, 1967

Official Reporters

NETHERCUT & YOUNG LIMITED
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TORONTO 1, ONTARIO
TELEPHONE 363-3111



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE: The Honourable Ivan C. Rand,
Commissioner, at The Toronto
Professional Building, 123
Edward Street, Toronto,
Ontario, on Thursday, April
13th, 1967.

E. Marshall Pollock Counsel to the Commission

APPEARANCES:

Mr. Rich Phillips)	Ontario Municipal
Dr. J.D. Fleming, Pres.)	Electric Association
Mr. John McBeth)	
Mr. E. Nokes)	

Mr. Elmo Curtis)	London, Ontario
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Mr. A.L. Furanna

Mr. V. Skurjat, Manager)	Textile Workers of
Mr. George Watson, Dir.)	America
Mr. John Whitehouse)	
Mr. B. Clark, Int. Rep.)	
Mr. Leo Tessier)	
Mr. M. Davidson)	

Nethercut & Young Limited, Official Reporters, 48
York Street, Toronto, Ontario. Per: T.F. Conlin

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1 Ontario Hydro supplies the power, and it has
2 some rural distribution of its own and it
3 distributes power in the northern community
4 and farming communities, but to a place like
5 the City of Toronto, it sells its power to
6 the Toronto Hydro Electric Commission and the
7 Toronto Hydro Electric Commission is the
8 retailer or the one who distributes that
9 power.

10 THE COMMISSIONER: I don't suppose
11 there is any distribution by private companies?

12 MR. McBETH: There are a few
13 sort of semi-private. For many years the
14 Town of Orillia had its own system and I don't
15 know if Mr. Nokes can tell me how many there
16 are in the province.

17 MR. NOKES: It would be Cornwall,
18 Gananoque, Fenelon Falls and I think maybe one
19 or two others.

20 THE COMMISSIONER: Didn't
21 Ottawa once have it that way?

22 MR. NOKES: Yes, sir, it did.

23 MR. McBETH: Ottawa is a member
24 of the O.M.E.A., or the Commission is and that
25 is roughly the system.

26 So we are speaking on behalf
27 of the collective utilities that retain electric
28 power in the province and, as such, we have
29 a monopoly apart from these one or two that
30 you have brought to our attention.



1 Now, I am prepared to read
2 the brief, Mr. Commissioner, if you wish.
3 If you have looked over it - I don't want to
4 ask if you have done your homework ---

5 THE COMMISSIONER: Yes, we
6 have read it.

7 MR. McBETH: Then, if you have
8 read it, I would rather confine myself to a
9 few general remarks and if you have any questions
10 that I can answer, I would be glad to attempt
11 to do so.

12 Our brief, of necessity, has
13 followed very closely that presented by the
14 Ontario Hydro Electric Power Commission
15 because we both, I believe, have one story
16 to tell and that story is the same.

17 We impress upon you the importance
18 of hydro supplied to the public. I don't think
19 I need to do that, but it is something that
20 you, yourself, are well familiar with, how
21 important it is to us today, the supply and
22 constant, dependable supply that hydro is.
23 I only refer you to the blackout that happened
24 two Novembers ago - a blackout which took
25 place mainly for about 12 hours and the
26 serious consequences in many parts of the
27 eastern continent that that blackout hit.
28 So I don't think I need to tell you how
29 important hydro is and the dependable supply.

30 THE COMMISSIONER: I suppose for



1 lighting purposes you have a complete monopoly.

2 MR. McBETH: Yes, sir.

3 THE COMMISSIONER: Nobody
4 uses gas now for lighting.

5 MR. McBETH: I wouldn't say
6 nobody. I think it is used in some of the
7 fancy restaurants and I know a street in
8 Etobicoke where they have both gas and for
9 efficiency purposes they have hydro and for
10 more decorative purposes they have gas. But
11 I have been to places where they use gas,
12 but I think there are many buildings, such
13 as the hospitals that we are surrounded with
14 in this location, that depend almost entirely
15 upon the supply of electricity.

16 Now, true, they may have standby
17 units, but my understanding of the standby
18 units is that these would be there to supply
19 the very essential hydro such as maybe lights
20 in operating rooms, or operating room equipment,
21 but would not, say, supply hydro for their
22 kitchens or heating or that sort of thing.

23 THE COMMISSIONER: What about
24 the supply of gas in relation to heating or
25 generating power.

26 MR. McBETH: Certainly there
27 are many homes and buildings around the
28 province that are heated by gas and I wouldn't
29 question that, but I don't think many of them
30 have an alternative - that is gas or hydro. I

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1 think they have either one or the other.

2 THE COMMISSIONER: And is
3 electricity essential to the use of gas for
4 heating purposes?

5 MR. McBETH: I believe it is.
6 I know it is for oiling heating but I don't
7 know about the gas. Do you know that Mr.
8 Nokes?

9 MR. NOKES: I believe they
10 have, or are working on a gas operated
11 thermostat but, as I understand it at the
12 present time, most thermostats are electrically
13 operated and this is the mechanism that
14 controls it.

15 MR. McBETH: Certainly it
16 is for oil heating in any event.

17 THE COMMISSIONER: What about
18 ordinary heating purposes? Do you have as
19 much of that as there is by gas?

20 MR. McBETH: We have a growing
21 demand and I think the major heating is oil
22 but this is certainly one of the outlets or
23 the markets that the hydro is trying to
24 expand and again I hesitate to use reference
25 to my own community but in Etobicoke we have
26 many of our new buildings heated by electricity,
27 the new apartment buildings and, of course,
28 this has the advantage of cleanliness and
29 freedom from air pollution and we are encouraging
30 it. It is still a little more expensive than



1 some of the other modes but it is competitive,
2 and is growing in popularity.

3 THE COMMISSIONER: Now, just
4 exactly how would you describe the effect
5 of that blackout? What was really paralysed?
6 Certainly lighting would be.

7 MR. McBETH: Of course, in a
8 building without heat and that depended upon
9 electric heat, I suppose 12 hours in November
10 it wouldn't be that bad but if it was 24
11 hours in a heavy frost in December, it would
12 freeze the plumbing and completely ruin part
13 of the structure let alone put the people
14 out on the streets seeking some other
15 accommodation. I think that blackout was
16 very serious in regard to elevator conditions
17 in New York. It was not of that long duration
18 here, but I think in the New York area they
19 suffered the most and I understand that there
20 were people trapped in elevators for a
21 considerable length of time and that they
22 had to be freed from those elevators in darkness
23 - that is they didn't have electricity to
24 supply.

25 I think it was serious in
26 some hospitals. I have no more detailed
27 knowledge than perhaps you have, other
28 than reading from newspapers. There are,
29 of course, such things as artificial lungs
30 which you occasionally hear about in private

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1 homes where an invalid is laid up in a private
2 home, depending upon artificial breathing of
3 some sort. It is very serious, of course,
4 if the hydro goes off there.

5 One of our problems - and you
6 talk about strike action - well, we will meet
7 essential services and we will supply and
8 our problem is that our wires are all hooked
9 up in areas rather than a special wire to a
10 hospital or a separate wire to a home with an
11 iron lung in it. If you are supplying one
12 you are supplying all. So that type of
13 difficulty is before us.

14 You may recall that the City
15 of Toronto, about a year ago, was threatened
16 with a strike by the employees and at that
17 time, the province realized what a bad thing
18 this would be because once the strike gets
19 under way, as you know, the machinery to
20 settle it takes a little while to come into
21 operation. Very rarely do I think you find
22 a strike settled within 24 hours. So the
23 province, realizing what would happen, in
24 its wisdom, passed legislation to make the
25 settlement compulsory, or brought out
26 compulsory settlement.

27 Now, I think what we are
28 suggesting is that if this was a good thing
29 for Toronto, the province, in its wisdom,
30 decided it would not permit a strike of electrical

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1 utilities in this city, the same applies to
2 Ottawa and the same applies to London and
3 the same applies to rural communities, or
4 any place there may be a hospital or any
5 place there may be people who are dependent
6 upon electricity.

7 So that if this is good
8 emergency legislation, certainly it would
9 be good to have that there all of the time.

10 Now, with regard to the right
11 that we referred to - people's right to
12 strike - this I know has developed over the
13 years. At one time, if two people got
14 together to sort of conspire to hold their
15 services from an employer in the early days,
16 this was regarded, I think, as a conspiracy.
17 We have come a full cycle, I think, on that.
18 The individual's right to strike and to
19 get together with other workers and to
20 decide not to work but to strike, has been
21 regarded now - has come to be regarded - as
22 a fundamental right.

23 But I wonder if we haven't gone
24 the full circle when the purposes that we
25 recognize this right for, have now been achieved
26 or many of them, and none of us will say that
27 strong unions have not accomplished a great
28 deal for all of us and for the community.
29 But having accomplished this, I am wondering
30 now, in such basic industry as hydro and police

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1 and fire, where you have this compulsory
2 arbitration, if in fact, when two people
3 in these fields get together and conspire
4 not to work, if it is not a conspiracy
5 against the public again because of the
6 importance, the extreme dependability
7 that the community has now on police and fire
8 services, because of the change in our
9 community set-up.

10 100 years ago there was
11 nothing comparable to electricity; we
12 could go out and supply our own heat and we
13 could go out and do so many things for ourselves.
14 But in our complex community today, we are
15 so dependent upon some of these things that
16 it seems to me that we have gone full circle
17 and today, when two people get together and
18 say "Let's cut off hydro, if that will achieve
19 our individual ends", I think that really
20 amounts to conspiracy against the public
21 interests.

22 THE COMMISSIONER: You don't
23 operate this for the contemplation of making
24 a profit, that you go to the general expenses
25 of a municipality?

26 MR. McBETH: No, sir. Some
27 communities, I think, do, but the act - and
28 when I say "do", if they do, as I understand
29 it they should not. And this is one reason
30 why our Association has argued very strongly

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1 that hydro commissions should be kept apart
2 from the general councils governing the
3 municipality and this has been done to date
4 so that any profits we may make are either
5 going back into the business or used to
6 reduce hydro cost. It is not used, and
7 should not be used ----

8 THE COMMISSIONER: Well, it
9 is not the theory of public municipal
10 administration. Take your water system.
11 The purpose of that is not to make a profit
12 but to supply municipal works.

13 MR. McBETH: I think that was
14 Adam Beck's basic idea, that the supply of
15 power belonged to the people and the essence
16 of Ontario Hydro is electricity at cost.

17 THE COMMISSIONER: So you
18 really represent the people and the municipality.

19 MR. McBETH: That is right
20 and we represent those who work for us as much
21 as we represent any other citizen in a
22 municipality. In other words, I may be
23 at the present time in a managerial position
24 on the local hydro Commission and have no more
25 interest in seeing that the Commission run
26 economically and to the best advantage than
27 an employee, who works for us and also lives
28 in the same community because the rates he
29 pays for his service are the very same as
30 the rates that I pay.

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1 MR. POLLOCK: With the only
2 exception, of course, that in your personal
3 capacity you are more charged with the efficient
4 operation of the plant and the employee and
5 if it operates efficiently - that is if the
6 rates are kept down and if they are in some
7 cases kept down at the expense of the people
8 working in the establishment - then I suppose
9 some may feel that is to your credit.

10 MR. McBETH: There is no
11 question of that. If I am a politician
12 and want to be elected again, it is certainly
13 in my interest to have a good record of
14 good public management and yet this is where
15 the poor politician is in a very insidious
16 position, in that the people who think well
17 of you often don't say so and the people who
18 think ill of you are very prone to say so.

19 THE COMMISSIONER: That is
20 one of the penalties of living.

21 MR. McBETH: When you are
22 in an elected position most of these
23 employees likewise have votes and are very
24 ready at election time and you may recall
25 last year the City of Toronto and the
26 municipality of Metropolitan Toronto were
27 both faced with strikes and I believe that
28 was timed perfectly to come about in November
29 just a very few days before the nomination
30 meeting. This is again one reason perhaps

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1 compulsory arbitration should be in this field
2 because on page four I believe we point out
3 some of the disadvantages of a political
4 corporation. It is not as though we were
5 paid management who could sit back free of
6 the public and not be under the same public
7 pressure that some of the other people are.

8 MR. POLLOCK: How long
9 could you continue to produce power in your
10 circumstances and distribute power if your
11 employees in one locality went on strike?

12 MR. McBETH: I think the answer
13 to that is indefinitely, provided no interruption
14 was caused or came about. In other words,
15 it doesn't take much to operate the system
16 provided everything is running smoothly. It
17 is only when there is a power storm or at least
18 a storm that affects the power lines or where
19 some malfunction happens in some of our
20 equipment, that you need people at all, almost,
21 in hydro. It is an automatic thing but it
22 is only when there is equipment failure that
23 you really need these people. But equipment
24 failure can happen at any instant, either by
25 an act of God or by sabotage or something of
26 that nature. Once that happens you are in
27 difficulty immediately and your supply is
28 gone almost immediately. There are no
29 alternatives.

30 MR. POLLOCK: Well, I assume

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1 from your opening remark that your concern
2 as distinct from the Ontario Hydro's concern,
3 is for the distributing function rather than
4 the production function, and that so long as
5 Ontario Hydro is producing you could distribute
6 so long as your lines don't break down or
7 your transformers are destroyed, or something
8 like that.

9 MR. McBETH: I think that is
10 a fair statement.

11 THE COMMISSIONER: But you do
12 have a substantial force don't you?

13 MR. McBETH: Oh, yes. Each of
14 these public utilities has sufficient force.
15 There are people who read the meters and
16 people who operate the switches and that
17 instal the electric wiring on the streets
18 that supply the wiring into your house.

19 THE COMMISSIONER: Well, take
20 any community. How many men do you employ
21 who come under the union?

22 DR. FLEMING: In the Town
23 of Dundas, which is my home municipality,
24 it has a population of 15 thousand people
25 approximately and our electrical utility
26 services about 45 hundred services and we
27 have a staff of 15 or 18 who are solely
28 concerned with the operation of that electrical
29 utility.

30 MR. McBETH: Both the men in



1 the field.

2 DR. FLEMING: Yes, and I would
3 think that this proportion, maybe three or
4 four employees per thousand customers - it
5 might be a little lower in the larger
6 municipalities, but it would run something
7 in this order, I would think.

8 MR. POLLOCK: These are
9 maintenance people as distinct from meter
10 readers?

11 DR. FLEMING: Yes, these
12 are maintenance linemen and trouble men of
13 all types.

14 THE COMMISSIONER: And they
15 require substantial skills.

16 DR. FLEMING: Very definitely,
17 yes. Our men are working as high as 27
18 thousand volts and this is not something to
19 be tampered with lightly, as I am sure you
20 appreciate.

21 MR. POLLOCK: So that, until
22 such an occasion arose where extraordinary
23 repairs would be required - and I mean apart
24 from the ordinary maintenance and preventive
25 maintenance - you could operate forever, I
26 suppose even if one area of your function -
27 the meter readers, I suppose - went out.

28 DR. FLEMING: May I cite
29 one instance that happened in our town last
30 summer. We have a large stone quarry in the

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1 Town of Dundas, Canada Crushed Stone. Many
2 man trucks every day come out of that quarry
3 loaded and they go down a little bit of a hill
4 and one of the trucks coming out of that
5 quarry last summer had a failure in the
6 brake system and the driver was able to
7 control the system so that it didn't cause
8 damage to people but in his efforts to miss
9 some children who were playing, he took off
10 a hydro pole, one of our main feeder poles
11 and a good section of our town was blacked
12 out just like that. It happened just at
13 5:00 o'clock in the afternoon but because
14 the crews had not yet checked out for the
15 day we had men on the scene within minutes
16 and within 45 minutes we had service restored
17 on a temporary basis to that area.

18 The only point that I strive
19 to make is that you know not when some sort
20 of disaster is going to strike.

21 MR. POLLOCK: And I suppose
22 the union position in those circumstances
23 is that if you've got that type of disaster
24 situation, they will come back to work and
25 provide that service.

26 DR. FLEMING: Yes, in union
27 contract, of course, this all comes under
28 overtime and it is well looked after.

29 MR. POLLOCK: I was thinking
30 of the suggestion made by the unions in

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1 opposition to the essential service argument
2 that they are prepared to provide emergency
3 services of that nature as long as there is
4 that type of emergency, and I don't think
5 anybody in the union would quarrel with
6 the fact.

7 DR. FLEMING: Well, if the
8 union, of course, happens to be on strike
9 when something like this happens, then I don't
10 know what would happen. I would think you
11 would have considerable difficulty in
12 getting the men out.

13 THE COMMISSIONER: But there
14 is the possibility?

15 DR. FLEMING: Well, you
16 don't have much risk.

17 THE COMMISSIONER: But what
18 about strikes?

19 DR. FLEMING: No, we haven't
20 had that many strikes.

21 THE COMMISSIONER: But in
22 the province there is a minimum, then.

23 DR. FLEMING: I would think so,
24 yes, and of course I think that strike action
25 is perhaps more likely to happen in the
26 larger sectors. I think smaller municipalities -
27 the whole picture is a little freer than it may
28 be in the larger centre.

29 MR. POLLOCK: I imagine that
30 the unions that represent your employees

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1 appreciate the vital service that is rendered
2 by the Commission and I think perhaps maybe
3 there is some greater degree of responsibility
4 on their shoulders as well as there is on yours.

5 DR. FLEMING: We would hope
6 so, yes.

7 MR. POLLOCK: So that you
8 generally operate it under the aegis
9 of collective bargaining and have concluded
10 satisfactory agreements.

11 DR. FLEMING: In our case, yes.

12 MR. McBETH: You asked if
13 there had been strikes and there have been
14 a few throughout the province. A perfect
15 experience was some suggestion of improper
16 action which resulted in some fairly serious
17 tie-ups in the system.

18 THE COMMISSIONER: Did it
19 last for any length of time?

20 MR. McBETH: Several months,
21 I am told, at Scarborough - the borough of
22 Scarborough - a few years ago had strikes
23 which have lasted for some length of time
24 and I don't know of any serious damage.

25 THE COMMISSIONER: Well, how
26 did it manage at that time?

27 MR. McBETH: I think they did
28 it with management personnel for the most part
29 and it carried on, but they did not - as I
30 understand it - run into any of these serious



1 situations that can come up. Now the very
2 purpose of strike action, as I understand
3 it, is to conduct a war, it is to hurt the
4 other side. If a strike doesn't hurt the
5 other side, there is really no point in calling
6 it or no point in locking your people out unless
7 you are going to hurt them in the pocket book.
8 So that it is only if strike action can hurt
9 that it has any purpose at all and we are
10 suggesting that this is the very purpose that
11 should be kept from happening. It should be
12 prohibited. But the general community
13 should not be allowed to suffer because of
14 the action of a group of this nature to
15 obtain a minority gain.

16 Now this is recognizing the
17 advantage to society over the years that the
18 right to strike has been brought about. Now
19 you say then, "Why can we take away from a
20 group?". I would suggest to you, gentlemen,
21 that we feel this way about it. It is up
22 to other industries and not police and not
23 municipal employees and in the electrical
24 field or in the fire fighting field, so
25 set the general standard of wages, the
26 general standard of working conditions. But
27 this must be up to some other industry that
28 is more specific, that is where delays will
29 not have the same disadvantage to the community.

30 I mentioned the steel industry



1 and the automotive industry. These have
2 traditionally been the leaders who set the
3 scale pattern and we all know that if a farmer
4 gets so much and the steel worker gets so
5 much, and the plumber gets so much, generally
6 speaking, they are the ones that decide
7 whether we are going to have four week's
8 holidays after so many years or three week's
9 holidays.

10 Now I am suggesting that if
11 certain people such as police and fire and
12 electrical people are denied the right to
13 strike and these other industries still
14 have that right, that they will be barometers
15 and that they will be adequate to set the
16 working conditions to accomplish what the
17 right of strike has accomplished for society,
18 and at the same time, the society will be
19 protected. Most of these people are employed
20 by a public employer - like the fire department
21 and the police and public utilities - and
22 their real right is not in this right that
23 they are fairly treated, to see that they
24 are fairly treated is not in their ability
25 to hurt the public whom they serve but their
26 right is in the fair-mindedness of public
27 employers. In other words, the press makes
28 sure that the public employees get a fair
29 deal. I think most of the public wants
30 to make sure that their servants are adequately



1 paid.

2 I see editorials in the Toronto
3 papers the last few days suggesting that
4 the police should have more pay than they
5 are getting. I think that there are
6 adequate protections if this right to strike
7 is taken from them, from the fact that they
8 are public employees and that the public
9 opinion will see that they are fairly dealt
10 with and I also suggest to you, gentlemen,
11 that there is some advantage in having
12 arbitration, in that it removes the fear
13 of strike.

14 Now I am sure that there are
15 many men who wish that they did not have
16 the right to strike or that their company
17 was not going out to strike. I am sure
18 that, although this is something that we
19 have regarded as a right, that there are
20 many common, simple working men that would
21 be very pleased and very happy in many
22 instances to know that they were not going
23 to be called out a week before Christmas
24 or some other time.

25 So that with the disadvantage
26 of losing the right to strike, I suggest that
27 they gain a right and that is the freedom
28 from fear of strike.

29 Now, sir, I would again draw
30 your attention to our last three recommendations

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1 or three points that we make on page 9. We
2 are a little contrite to the Ontario Hydro
3 brief in that we feel that since strike action
4 can be so important in something like hydro,
5 yet we have not got time to engage in the
6 present legislation to the labour board,
7 that it must be faster than this. If it
8 is an illegal strike, surely the best person
9 to say whether it is legal or not is the
10 court. They are the best equipped both
11 by tradition and practice and let us not
12 waste time with labour boards; let us have
13 the right to go directly to the court and
14 in the public interest, we feel this must
15 be maintained.

16 MR. POLLOCK: The converse
17 of that argument is the advance of this
18 equal strength in favour of labour relations
19 board saying that they are the ones who have
20 experienced labour problems and they are
21 the ones who know what labour relations is
22 all about and they see more strikes and
23 labour disputes than any courts. Why
24 ought they not to be the ones?

25 MR. McBETH: I think our answer
26 to that is the time element, that the court
27 is still regarded, as I understand it, as the
28 final word on this and it is the time of
29 having to appeal to the labour relations board
30 first and then face a yes - then you have to

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1 go on to the court for your final authority.

2 MR. POLLOCK: Well, you get
3 the declaration ~~that~~ the strike is unlawful
4 from the labour relations board and then
5 you can, I suppose, in a short period, get
6 the consent to prosecute, if that is what
7 you mean. But it has been the experience
8 of the labour relations board that it is
9 sufficient in a large number of circumstances
10 to get the declaration that this is - so
11 far as the employers are concerned - to
12 get the declaration that this strike is
13 unlawful and it has the happy effect of
14 returning some people to work.

15 MR. McBETH: Our only problem
16 is, as I say, if a strike is occurring and
17 is not hurting, I suppose it doesn't bother
18 anybody, but a strike that is occurring and
19 is hurting, that is somebody is suffering
20 by it, then 24 hours is too long to remain
21 on strike.

22 MR. POLLOCK: Of course, there
23 are more than economic issues in the strike
24 aspect. There are psychological, I suppose,
25 and emotional feelings when the employees go
26 on strike, even if they don't, in fact, hurt
27 the employer economically, they have at
28 least shown the "boss" that they don't have
29 to take his answer as final in relation
30 to these things. They can go on strike and

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1 they are free people in our society and
2 independent and it is difficult to measure
3 that. You can't put dollars and cents in
4 it like you can in the economic game and
5 that certainly has been suggested as one of
6 the factors in the strike atmosphere.

7 MR. McBETH: I don't deny
8 that, sir, and I think it is one of those
9 things that we have grown to regard as part
10 of our democratic heritage, that we do
11 have this right, but this is what I am
12 trying to suggest has gone the full circle;
13 that this right has achieved its purpose and
14 now is beginning to be used as a tyranny
15 against the public and not one of those
16 things that helps to advance society, in
17 certain circumstances and I am suggesting
18 that hydro is one of those circumstances.

19 I have just had a note
20 passed to me that the public utilities
21 Commission in London has voted to go out on
22 strike but no date has been set for that.
23 Now that is only the threat of strike.
24 There have actually been strikes in hydro
25 but again, I come back to the Toronto
26 situation where the provincial legislature
27 said we must not permit a strike in the
28 electrical utility field to happen.

29 MR. POLLOCK: In some
30 circumstances.



1 MR. McBETH: Well, I don't
2 know if Toronto is any different from Hamilton
3 or any other community where certainly you
4 have a collection of circumstances here in
5 Toronto but you might have any one of those
6 individual circumstances exist in any of
7 the other communities.

8 MR. POLLOCK: We had a
9 prolonged strike in Perth, or some other
10 place. So that all the strikes that occur
11 in the organizations and on whose behalf
12 you speak, don't necessarily result in
13 that type of emergency.

14 MR. McBETH: That is true.
15 As I say, we can go on with our management
16 staff maybe for months but if it is hurting,
17 then it is not hurting us as management,
18 it is hurting ^{the} public generally.

19 MR. POLLOCK: It is hurting
20 the public in the sense of not having to
21 pay more money because I don't know whether
22 that is a value that you can support, but
23 I think it is hurting them in the sense that
24 it is depriving them of an essential service.
25 That is the point you are talking about.

26 MR. McBETH: Yes, an essential
27 service upon which life, health or safety
28 may depend.

29 MR. NOKES: May I speak, sir.
30 This business of Perth had certain circumstances

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1 surrounding it which enabled it to be a
2 prolonged strike. It was not run or
3 not continued operations by supervisory
4 personnel; it was a strike for union
5 recognition and in the initial stages it was
6 operated first by supervisory personnel
7 and secondly by adding to them by hiring
8 new people and thirdly by supporting those
9 people with a return of a good portion
10 of their regular staff. But the strike
11 continued with a portion of the staff
12 remaining out with picketing and so forth.
13 And it has some rather difficult things to
14 explain. There were power breaks and
15 so forth, mainly of a cut nature and which
16 were difficult to locate.

17 THE COMMISSIONER: What was
18 that?

19 MR. NOKES: Like wire
20 cutting which was difficult to locate and
21 find and this is covered by the pictures
22 in the newspapers and so forth, that were
23 referred to to get the story. But that was
24 an unusual story, actually.

25 THE COMMISSIONER: What was
26 the ultimate result?

27 MR. NOKES: I don't believe
28 they achieved union recognition.

29 MR. POLLOCK: By union
30 recognition, we are talking about what?



1 MR. NOKES: Certification and
2 a bargaining agent.

3 THE COMMISSIONER: Why would
4 they oppose that?

5 MR. NOKES: I don't know the
6 answer to that, sir. I suppose they feel it
7 is easier to live without this problem.

8 THE COMMISSIONER: Are they
9 without it now?

10 MR. NOKES: I couldn't answer
11 that either, sir.

12 MR. McBETH: Now, let me say,
13 sir, that most of our utilities are unionized
14 and I would say that most of them are highly
15 regarded unions and they are run by responsible
16 people and we enjoy good public relations
17 with them - good relationships. But as I
18 say, when the strike comes the very purpose
19 of the strike is to hurt the other person
20 no matter which side it is on and it is a
21 war of escalation, once the strike starts.

22 THE COMMISSIONER: But in
23 this case it is really to coerce the public.
24 Now you stand there as agents ----

25 MR. McBETH: I didn't want
26 to use such harsh words, sir.

27 THE COMMISSIONER: I don't think
28 it is harsh at all. I think it is realistic.

29 MR. McBETH: It is the public
30 and it is the point I have been trying to make

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1 when I say it has gone full cycle, that all
2 legislation must certainly be acting for
3 the commonweal and we have recognized
4 at some place in our history that the common
5 rule can best be aided by giving individuals
6 the right to strike.

7 THE COMMISSIONER: But in
8 relation to wages, do you apply the relation
9 of those wages to wages that are determined
10 by the play of competition in private
11 industry?

12 MR. McBETH: Yes, we must,
13 of course, because many of our electrical
14 people can go out in private fields and work
15 for Westinghouse, or General Electric or
16 Feranti, or any of them. They can't go
17 out and be linemen in the same sense for any
18 other company, but they can go over to Ontario
19 Hydro and, at the present time, there is a
20 tremendous shortage of linemen. It may not
21 always be such but really, I think the people
22 on the outside feel today what helps to better
23 their condition more than anything else is
24 competition between the employers themselves.
25 We have a most difficult time getting linemen.

26 THE COMMISSIONER: But the
27 ordinary conditions of agreement are provided
28 in your arrangement with your men?

29 MR. McBETH: Yes, we have
30 got the bargaining agreements and I suppose some



1 of them are more sophisticated than others,
2 but we all have these collective bargaining
3 agreements. I don't have one with me but
4 I could certainly supply you with a copy
5 of ours in Etobicoke.

6 THE COMMISSIONER: I suppose
7 they provide a means of protesting against
8 a dismissal?

9 MR. McBETH: Yes, their
10 agreement procedure is set up first at the
11 senior staff level and then to the various
12 electric hydro commissions and then, failing
13 that, to some sort of arbitration.

14 MR. POLLOCK: The argument
15 that is made against your position on the
16 question of "no strike", is that you aren't
17 as above reproach as I suppose Calpernia
18 was supposed to be, in areas where the wage
19 level is a question. The argument in its
20 most emotional terms is "If we are an
21 essential industry and we are forbidden to
22 strike, why ought we to subsidize the rest
23 of the community?"

24 MR. McBETH: I agree and
25 many utilities would pay as little as they
26 can but we are not saying that there should
27 not be a right to this arbitration and we
28 feel then that the arbitrator, just as police
29 and fire, we realize that arbitration will
30 probably work against the employer as far as



1 salaries are concerned. In other words, we
2 have the right to strike and let's take
3 something from management too, because if
4 we have the right to not go higher, then we
5 can have a better chance of holding salaries
6 or holding wage levels than if we have to
7 go to arbitration, which generally comes
8 out at a compromise. So both sides lose
9 an arbitration.

10 THE COMMISSIONER: Well, that
11 seems to have been the experience in hospitals.

12 MR. McBETH: And certainly
13 I think it is the experience in the fire
14 departments. The fire department wages
15 have benefited greatly from the forced
16 arbitration and I don't think the firemen
17 regret forced arbitration too much. In
18 fact, although they may not publicly say
19 so, I think privately they are very happy
20 with the results of arbitration.

21 MR. POLLOCK: What are the
22 criteria and what are the basis on which
23 an arbitrator can base a decision as to
24 how much justice there is in a particular
25 trend?

26 MR. McBETH: I don't know
27 the answer to that. I would suggest that
28 he would have to look for the leaders in the
29 steel industry and the automotive industry
30 and to what other public employees are getting



1 and what the potential is, I think you would
2 have to look into the whole scope of employment
3 throughout the province.

4 THE COMMISSIONER: I suppose
5 all you can say is that these seem to become
6 acceptable in their differentials.

7 MR. McBETH: I think so, what
8 you think you can get people to work for you,
9 I think is doubtless, one of the factors
10 but it is not the only factor and I think
11 the public of Ontario want their employees
12 whether provincial or dominion or municipal
13 level, to be paid fairly and to have good
14 working conditions and I think that is really
15 the best protection. They can lobby with
16 the politicians and they do and very effectively,
17 because I, as an elected representative,
18 represent the employee as well and if any
19 of them want to talk to me and tell me how
20 unfairly we are treating them, I know my ear
21 is always open and I think the majority of
22 politicians have their ears open, so that
23 we are a little different animal, as employers
24 than perhaps ordinary management.

25 Now, sir, I believe I have
26 nothing to add unless any of my colleagues
27 have something to say or if you have further
28 questions.

29 MR. POLLOCK: On page 9 in
30 your summation that the procedure for ex parte

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1 injunction available to employer, utility
2 in case of an illegal strike to retain,
3 do you lay any emphasis on the ex parte
4 nature of the injunction or just the question
5 of the injunction?

6 MR. McBETH: Yes, I think
7 the ex parte, in regard to the speed of
8 the matter that we should be able to act
9 a little more promptly on an ex parte matter
10 than perhaps you would be able to act on one
11 where you have to give the usual motion and
12 notice for motions.

13 MR. POLLOCK: Or the usual
14 notice - you can get shorter notice.

15 MR. McBETH: Well, we are
16 only interested in speed on these things.
17 Speed is the criteria for us. If the
18 strike is not hurting, then speed is not
19 essential but if the Sick Childrens Hospital
20 across the road suddenly has its power cut
21 off, then speed is terribly essential.

22 THE COMMISSIONER: I suppose
23 you could take along someone who could give
24 evidence to that just as easily as you could
25 prepare an affidavit.

26 MR. McBETH: Yes, I would
27 think so.

28 MR. POLLOCK: And I suppose
29 you could call the other side and notify
30 them that you are going to make this application.



1 MR. McBETH: Yes, and I think
2 in the circumstances we are talking about -
3 and in most cases now I am thinking of
4 Toronto, and perhaps not a small case - but
5 there would be good notice through the public
6 press. But, of course, that doesn't apply
7 to many of the smaller communities.

8 Now there are some people
9 here from London this morning and they are
10 the ones who are particularly interested
11 in this at the present time. I didn't know
12 they were going to be here and I think they
13 are here because of their particular
14 circumstances where strike action has
15 suddenly become a very momentous concern -
16 or concern of the moment - to them and I
17 don't know whether they wish to speak or
18 whether you wish to hear them. They were
19 not scheduled to be here, sir.

20 MR. POLLOCK: I just have
21 one further question on the general nature
22 of your submission about compulsory arbitration.
23 Are you suggesting that it be placed in the
24 legislation as a definite resort that after
25 so many other steps have taken place, that
26 that is the automatic answer or because the
27 objection that is being raised to that is
28 that if you know a thing is going to be
29 decided by compulsory arbitration, then ----

30 MR. McBETH: That is where it



1 goes anyway.

2 MR. POLLOCK: That is right.
3 Or would you be content to say there ought
4 to be provision in the legislation for
5 emergency declaration that this particular
6 dispute has reached the emergency stage
7 or has caused an emergency, that there ought
8 to be compulsory arbitration?

9 MR. McBETH: I think that
10 would only be our second choice. I think
11 our first choice is to the effect that this
12 be one of the automatic steps if the steps
13 go that far. But, certainly the second
14 position that you have put could have its
15 advantages and that, I think, would be our
16 second suggestion, that it would be only
17 in certain circumstances, once the situation
18 had been declared, of sufficient emergency
19 or sufficient importance, then compulsory
20 arbitration would apply. But our request
21 is in all cases.

22 MR. POLLOCK: Did the gentlemen
23 from London wish to make any statements?

24 THE COMMISSIONER: Well, just
25 a moment. What would be the terms of your
26 injunction that you would obtain, Mr. McBeth?

27 MR. McBETH: I am sorry, sir,
28 I don't follow the background of the question.

29 THE COMMISSIONER: Well, you
30 were speaking about making immediate application

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1 to the courts. What would you ask the
2 court to give you?

3 MR. McBETH: I suppose to
4 have the strike declared as an illegal
5 strike.

6 THE COMMISSIONER: Well,
7 suppose it is a legal strike.

8 MR. McBETH: Obviously, we
9 wouldn't get our declaration. We are
10 assuming that it is an illegal strike and
11 we want to have those who want to be able
12 to work to get in there.

13 THE COMMISSIONER: What
14 would you do in the case of a legal strike?

15 MR. McBETH: Then, this
16 - when you talk about injunctions, we are
17 looking at a strike as illegal. Now, if
18 it is a legal strike ----

19 THE COMMISSIONER: No, no,
20 you have legal strikes where injunctions
21 are issued.

22 MR. McBETH: I am saying if
23 it is a legal situation, this is what I am
24 suggesting should not be allowed to happen.

25 THE COMMISSIONER: Well,
26 what your whole argument is^{is} for prohibition
27 by legislation.

28 MR. McBETH: That is correct,
29 sir, yes.

30 Thank you very much, gentlemen.



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1 we appreciate your attention this morning.

2 MR. POLLOCK: Thank you. I
3 take it that the London people do not care
4 to make any submissions?

5 MR. CURTIS: I think we are
6 quite satisfied with the treatment we are
7 getting. I would say that ours in London
8 is a legal strike and everything has been
9 done in the proper manner and I think that
10 the brief has covered everything and I would
11 certainly go along with that.

12 My name is Elmo Curtis.

13 MR. POLLOCK: Mr. Curtis,
14 would you tell us, if you are free to do so,
15 what the outstanding issues are?

16 MR. CURTIS: Money and some
17 fringe benefits.

18 MR. POLLOCK: How far apart
19 are you on the money issue? I don't want
20 to do anything in this hearing to prejudice
21 the negotiations, so if there is something
22 that you feel better left unsaid, then all
23 right.

24 MR. CURTIS: Well, it is all
25 in the press so it is all out and there is
26 nothing to prejudice our position.

27 MR. FURANNA: We are actually
28 very close insofar as wages are concerned.
29 The union originally passed a 20 per cent
30 increase. At a union meeting just within the

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1 last two days they decided to reduce their
2 demands to 15 per cent for one year. The
3 Commission already offered, long before the
4 negotiations even got to arbitration stage,
5 to give 11 3/4 per cent for one year. The
6 Commission had a meeting with the management
7 and with the union last Monday and offered
8 a new arrangement which would give them
9 11 3/4 for 1967 and an additional 4 1/2 for
10 1968. They were talking of a one-year
11 contract previously and we have taken the
12 stand that because negotiations have gone
13 on so long, that we want a two year agreement.
14 This is the point that we are at as of now.

15 The union, last night at a
16 general meeting, took a vote to go out on
17 strike and no date has been set. It so
18 happens that this is a rather, I think, an
19 unusual situation, in that the City of
20 London - that is the Works Department - are
21 also negotiating at this same time. There
22 are two unions in the city, both locals of
23 the same C.U.P.E. union that our people
24 belong to. They have agreed to band together
25 and hold out for an agreement satisfactory
26 to all three parties before any one of them
27 will settle. This has been made public
28 by the union in the press and on TV so that
29 there doesn't seem to be any doubt in our
30 mind that this is the position the union has

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1 taken and this is where we stand at the moment,
2 sir.

3 MR. POLLOCK: What is the
4 remuneration or annual remuneration presently
5 and what the additional 11 3/4 or 20 per cent
6 will increase it to?

7 THE COMMISSIONER: Has this
8 been all made public?

9 MR. FURANNA: Yes, it has, sir.
10 The present wage for a lineman - and everything
11 else is relative - is now \$3.11 an hour.

12 MR. POLLOCK: That is \$3.11
13 an hour. What does that project out to over
14 a year? That would be \$6,468.80, is that
15 about it?

16 MR. FURANNA: That would be
17 about it.

18 MR. POLLOCK: That would be
19 an additional 6 to \$1200 on top of that - or
20 perhaps a little bit better than 6.

21 MR. FURANNA: The new proposed
22 rate for 1967 would be \$3.48 and the rate
23 for 1968 would be \$3.56. Now, before
24 starting negotiations at all, we made a very
25 exhaustive survey of the rates being paid
26 in comparable utilities, that is comparable
27 in size within 100 thousand population above
28 and below London, and in the geographical
29 area between Windsor and Toronto, and we felt
30 that this was the area in which London's economy

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1 could be compared, and taking these and also
2 including the rates paid in major industries
3 in London and with this guide, we arrived
4 at what we considered to be an equitable
5 wage level. The Commission has taken the
6 attitude that our employees should be
7 entitled to a level of wages that is within
8 the upper quartile of wages in this area
9 that I have described and based on that
10 theory, we have come up with this offer.

11 Now, this does not mean that
12 we are offering the highest wages in this
13 area. For example, the City of Toronto
14 just settled now for, I believe it was \$3.54.
15 It is six cents difference.

16 Now, taking the D.B.S. statistics
17 into account and other general surveys on
18 wages that have been made throughout this
19 part of the province, we have felt that this
20 difference between Toronto and London, for
21 example, is in proportion to the economy in
22 the two places, that is the cost of living.
23 The general level of wages in Toronto is
24 higher than that in London and all of these
25 things taken into account, this is the way
26 the Commission has determined its position
27 and, incidentally, I think I should say that
28 this acquisition was given to the union at
29 the very outset and these increases have
30 been for 1967, they were given to the union



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1 before they even asked for anything, so that
2 I think bargaining in good faith was certainly
3 being demonstrated there.

4 THE COMMISSIONER: You understand
5 this Commission hasn't anything to do with
6 these matters and we receive this only as
7 a matter of information to see what municipalities
8 have to face from time to time?

9 MR. FURANNA: Yes, I realize
10 that, sir.

11 MR. POLLOCK: Thank you very
12 much, gentlemen.

13 Once again I would like to thank
14 the Ontario Municipal Electric Association
15 for this submission and their time and effort.

16 MR. McBETH: Thank you,
17 gentlemen, for your attention.

18 ---Luncheon adjournment.
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---On resuming

MR. POLLOCK: This is the
Textile Workers Union of America C.L.C.,
A.F.L., C.I.O.

We have Mr. George C. Watson,
the Canadian Director and with you, Mr. Watson,
are Mr. Victor Skurjat, Mr. John Whitehouse
Mr. Charles Bud Clark, Mr. Leo Tessier and
Mr. Monty Davidson.

Are you the spokesman, Mr.
Watson?

MR. WATSON: Yes, sir.

MR. POLLOCK: I can tell you
that both the Commissioner and I have read
the brief with considerable interest and we
can proceed on the presentation in any manner
that best suits you. If you want to discuss
some aspects of it, or deal with the summary
form or it, or read it and we can ask some
questions later on or during the course of
your presentation, whichever suits your
preference.

MR. WATSON: Mr. Chairman,
I think we will read most of it. There are
a few items that I don't feel of too much
importance. The first two pages are really
an historical background of the union and I
will go on to page 3 and it starts off:

"It seems apparent to us, in
the wake of our recent experiences with Tilco

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1 Plastics Co., in Peterborough, and Spinrite
2 Yarns and Dyers, in Listowel, that the
3 court injunction is now being used by hostile
4 employers as a standard union-busting weapon.

5 Standard procedure for an
6 anti-union employer seems to follow a pattern.
7 First, proceed through the collective bargaining
8 motions necessary during negotiations for
9 a first agreement. Since Section 12 of the
10 Ontario Labour Relations Act fails to
11 indicate what is meant by bargaining "in good
12 faith", it will be next to impossible to show
13 that the company is not bargaining in good
14 faith. Second, to ensure that an agreement
15 is not consummated, introduce a collective
16 bargaining item that will be completely
17 unpalatable to the union - in the case of
18 Spinrite Yarns it was a \$50,000 "Performance
19 Bond". Third, during the first days of
20 the inevitable strike secure an ex parte
21 or interim injunction that either prohibits
22 or effectively limits pickets for a few
23 critical days. Finally, actively recruit a
24 new work force and establish them in the
25 struck mill while the union's picket line
26 is banned or reduced to a forlorn band of
27 two or three pickets.

28 The key to success in this
29 blue-print for destroying a certified
30 bargaining agent, and replacement of a

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1 unionized work-force, lies in the nature of
2 the industrial operation and the work-force.
3 A sizeable portion of the textile, plastic
4 and allied product industries, can maintain
5 operations with a relatively unskilled
6 replacement work-force, providing key skilled
7 jobs are filled by supervisors or others.
8 As a consequence workers within these industries
9 are particularly vulnerable to the consequences
10 of a court injunction banning or restricting
11 picketing.

12 Consequently, while we readily
13 concur with the Ontario Federation of Labour
14 that "The process of collective bargaining
15 is seriously under-mined, and the employer
16 is less likely to bargain in good faith if he
17 knows that when a strike is called he can
18 easily get an injunction against picketing and
19 thereby weaken or break the strike", we would
20 express the difficulties we face with the
21 growing use of injunctions in much more
22 emphatic terms.

23 Under circumstances prevailing in
24 the industrial sector with which we are
25 concerned, not the least of which is the
26 ease with which the work force can be
27 replaced in some vulnerable segments, the
28 use of an injunction to ban or restrict
29 picketing is tantamount to denying employees
30 in these industries the rights and benefits



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of collective bargaining.

The effect of such an injunction is not only to break the employees legal strike, often by affording the employer the opportunity to totally replace his unionized work-force, but in effect, to deprive the striking employee of his job.

Invariably, the effect of court injunctions during industrial disputes is such as to weight the balance of power heavily in favour of the employer. Often to the extent of completely destroying the basis, or opportunity, for collective bargaining.

The point was recognized in the editorial columns of the Peterborough Examiner. "...there are some instances where the sheer size of the striking work force and the complexity of the industry in which they are involved create a situation in which both sides to the dispute are fairly evenly matched. There are other situations such as the Tilco case where the use of the ex parte injunction and the injunction proved to be powerful weapons in breaking the strike".

In our view the Tilco affair provided a classic illustration of the way an employer can utilize the court injunction to smash a strike, destroy a legally certified bargaining agent, and frustrate the

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1 efforts of his employees to establish a
2 collective bargaining relationship. It
3 also furnishes us with a clear picture of the
4 ineffectiveness of the Labour Relations Act
5 in protecting the collective bargaining and
6 job rights of vulnerable employees when
7 confronted by a hostile employer. Because
8 the Tilco situation is so closely related
9 to the terms of reference of this enquiry,
10 we feel it may be of assistance to your
11 Commission if we record salient factors and
12 events as they relate to collective bargaining
13 in that situation.

14 When the employees at Tilco
15 Plastics Ltd., called upon us to organize
16 them during June, 1965, we recognized the
17 task of negotiating an agreement with this
18 particular employer would not be easy. Over
19 the years the employees had made various attempts
20 to establish a collective bargaining relationship
21 without success. Several years previously
22 the United Electrical, Radio and Machine Workers
23 of America (Independent) had established
24 bargaining rights; had "failed ... to obtain
25 a contract at the plant", and had subsequently
26 been decertified.

27 However, for the employees, most
28 of whom were girls, many in the 16 to 20 year
29 age group, working conditions and wage rates
30 were sub-standard. The starting rate at the

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1 plant was the statutory minimum of \$1.00 an
2 hour rising eventually to \$1.12 and \$1.17
3 "depending on the category of the employee".

4 Under these circumstances it
5 was felt a campaign had to be initiated and
6 three or four weeks later, on July 22nd, 1965,
7 the Textile Workers of America was certified
8 as bargaining agent by the Ontario Labour
9 Relations Board.

10 For the next five months
11 collective bargaining was an exercise in
12 futility. The situation was not improved
13 by the dismissal of union members during
14 this period, acts that necessitated the
15 filing of charges against the company under
16 provisions of the Ontario Labour Relations Act.

17 The situation was reflected in the
18 comments of John McPhee, columnist for the
19 Peterborough Examiner:

20 "The Textile Workers Union
21 of America and Tilco Plastics Ltd.,
22 will meet again in an effort
23 to reach a first agreement,
24 without the aid of a conciliation
25 officer. This is another
26 union drive that has run into
27 management opposition following
28 certification. I understand
29 the union has filed at least
30 one unfair labour practice charge,



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but is willing to settle out
of court for the sake of future
labour-management relations.

Most of the employees are
women."

At one point in the negotiations
it was the understanding of union negotiations
that terms of an agreement had been reached.
Terms of settlement were taken back to the
union membership, acted upon and ratified.
When co-owner Harold Pammett was subsequently
advised of the ratification he denied that
agreement had been reached on a \$25 payment
in lieu of retroactivity. He subsequently
offered \$15, then withdrew even that sum.

This event was characteristic
of management's attitude and activity during
these prolonged negotiations and we became
convinced that management had no intention
of permitting a union to be esta-
blished in the plant. It would seem that the
futility of the situation was apparent to
the department of labour conciliation officer
by November 26, 1965, for on that day he
recommended that no conciliation board be
established. This recommendation was adhered
to by the Minister of Labour and on December
14, 1965, the employees started a legal strike.

An active strike-breaking
campaign was initiated immediately by the



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1 company in the form of a recruiting drive for a
2 new work-force. To quote the December 14, 1965
3 issue of the Peterborough Examiner: "Mr.
4 Pammett said he expects to hire more women
5 workers Wednesday. He said "things are going
6 very well considering this is the first day of the
7 strike. We are telephoning people whose
8 applications we have on file and telling them
9 we are on strike, and asking if they want a
10 job".

11 The second phase came on the
12 third day of the strike. On December 17 managements'
13 application for an injunction was granted. The
14 union wasn't asked to appear by the judge
15 who granted the court order. Without giving
16 the union the right to state its case, the
17 judge enjoined all picketing for a critical
18 temporary period of a few days. So now the
19 employees picket-line was wiped out by a court
20 order, and under the umbrella of this injunction
21 management brought its new employees into the
22 plant.

23 A few days later, on December
24 20, under threat of losing any right to picket
25 the plant whatsoever, we were forced to agree to
26 a permanent injunction restricting picketing
27 to four persons per gate, a total of 12.

28 The dilemma with which a
29 union is confronted under these circumstances
30 is described and explained in the recent Ontario

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Federation of Labour submission to the Government
of Ontario:

"Too often the courts and judges
have been used by employers,
under pretence of protection
against 'intended' violence,
to issue ex parte injunctions
automatically at a critical
moment of a strike. The
damage has been done by the
time the hearing takes place.
If it comes to a hearing, the
representative of the workers
is forced to agree to a
limited picket rather than wait
through the lengthy procedure
that would ensue if he were to
oppose the injunction in the courts.
In such a case, the original
interim injunction would
be extended to the time of
disposition of the case. He
loses both ways."

We should place on record the fact
that the Textile Workers Union of America
immediately complied with the terms of the
prohibitive ex parte injunction, and after
the second restrictive injunction was issued
its terms were fully complied with.
At no time after that were there more than

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1 twelve striking employees (four per gate)
2 picketing at any given time.

3 From the moment the injunction
4 was granted, first prohibiting, then
5 severely restricting, picketing, the balance
6 of power swung decisively to management in
7 the Tilco situation. Indeed there is a great
8 deal of evidence that management recognized
9 this fact.

10 In this regard much of the
11 evidence we placed before the Ontario Labour
12 Relations Board during the hearings of June
13 9, and August 22, 1966 re our application
14 for leave to prosecute the company for
15 failing to bargain in good faith, may be of
16 assistance to your Commission. In our
17 opinion it has an important bearing not only
18 upon the use of injunctions in industrial
19 disputes, but also on the deficiencies of
20 Section 12 of the Ontario Labour Relations
21 Act with respect to determination of what
22 constitutes failure to bargain in good faith.

23 Our representations before
24 the Labour Board on these occasions were also
25 widely reported in the daily press. In
26 particular we refer your Commission to the
27 June 9, 1966 issues of The Toronto Star and
28 The Telegram, and the June 10, 1966, issue
29 of the Globe and Mail.

30 Typical is the story appearing

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1 in the Globe and Mail of that date head-lined,
2 "Tilco owner cited court backing, labour
3 official says - Boasted of breaking union,
4 hearing told".

5 The salient quotes from that
6 item may be of interest to your Commission:

7 "The Ontario Labour Relations
8 Board was told yesterday
9 that one of the owners of
10 Tilco Plastics Ltd. of
11 Peterborough had boasted
12 that a court injunction limiting
13 picketing would permit him
14 to ride through a strike and
15 bring about the decertification
16 of the union.

17 The statement was made by
18 Victor Skurjat, manager of the
19 Greater Toronto Textile Joint
20 Board, testifying on an
21 application by the union for
22 permission to prosecute the
23 company for failing to bargain
24 in good faith.

25 Mr. Skurjat quoted Harold
26 Pammett, who had dealt with the
27 union before the strike, as
28 telling a group of officers
29 last January: 'Now that I
30 have the court behind me, I



1 can ride this through'.

2 Mr. Skurjat said that Mr.
3 Pammett walked into strike
4 headquarters across the
5 street from the plant and
6 told the union men they had
7 placed themselves in a
8 position where no settlement
9 could take place. Mr.
10 Skurjat said Mr. Pammett told
11 the union there were some individuals
12 he would never take back.

13 Although he attempted to
14 persuade Mr. Pammett to negotiate
15 Mr. Skurjat said, 'Mr. Pammett
16 said he was not interested'.

17 He said that if it was not for
18 the injunctions we would have
19 flattened him, as he put it, in
20 two weeks, but because of the
21 court order, he was going to
22 consolidate and wait until the
23 end of July and have us
24 decertified."

25 Reference to our desire to re-open
26 negotiations in the weeks that followed the
27 implementation of strike action, and the
28 company's blunt rejection of numerous mediation
29 attempts from all kinds of interested community
30 groups and authorities, leads us to the

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1 conclusion that a mechanism ought to be
2 established in the Labour Act to provide a
3 confrontation around the bargaining table
4 by the disputing parties, if either one,
5 signifies a desire for such a meeting. Such
6 post-strike, or lock-out meetings, convened by
7 a conciliation officer, would at least
8 circumvent the kind of unilateral decision,
9 made by Tilco, that effectively blocked all
10 efforts to bring the parties together.
11 Obviously we are not suggesting this as a
12 panacea, but rather as the initial, and very
13 necessary step in the process of establishing
14 the setting for a dialogue.

15 Early community efforts at
16 mediation in the Tilco situation, and the
17 contrasting attitude of the parties toward such
18 mediation efforts, are chronicled in the
19 newspapers of that period. "

20 I am not going to read these
21 newspaper items, but it is indicated in the
22 presence of the Peterborough Labour Council,
23 a ministerial group, Keith Brown, M.M.P., the
24 Deputy Minister of Labour and the Chief
25 Conciliation Officer, all made definite and
26 repeated attempts to get the company to the
27 bargaining table and all of these failed.

28 I will go on to page 11, and
29 I would like to read an editorial comment
30 from the Peterborough Examiner concerning these



1 efforts. It says:

2 "After the refusal Thursday
3 of Tilco officials to enter
4 into further discussions with
5 the Textile Workers Union
6 of America, representing
7 striking employees at the
8 plant, the question arises as to
9 what must be the next step.

10 Peterborough M.P.P. Keith Brown
11 who was present at the meeting
12 between company officials
13 and Department of Labour
14 representatives, suggests
15 that all legal steps in the
16 bargaining process have been
17 exhausted. In effect the
18 company is able to decline
19 to bargain with an employees
20 organization which has been
21 sanctioned by law. "...if
22 as Mr. Brown suggests, there
23 is in fact no further recourse
24 in law, then the law is surely
25 lacking, for it has created
26 a ludicrous situation. That
27 is, that in order to give
28 effect to the laws regarding
29 strike action and collective
30 bargaining, unionists must



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1 go outside the law'."

2 Now, I would like to read the
3 issue of Mr. Rowntree on February the 24th,
4 in the Ontario Legislature Minister of
5 Labour, Leslie Rowntree conceded under
6 questioning that:

7 "Management of the plastics
8 firm had turned down his
9 request to meet with the union."
10 and when asked by a member of the legislature
11 whether he did not feel this was a refusal
12 by management to bargain in good faith, the
13 labour Minister replied, "Well, to be quite
14 frank, it certainly has all the appearances
15 of it".

16 Against this background your
17 Commission will readily understand why we
18 initiated action before the Ontario Labour
19 Relations Board with a view to obtaining
20 consent from the board to prosecute the
21 management of Tilco Plastics Ltd., for
22 failure to bargain in good faith under the
23 terms of the Act.

24 Incredibility and a deep sense
25 of injustice were our reactions to the findings
26 of the Ontario Labour Relations Board, when,
27 after months of delay, in a majority report,
28 our request for permission to initiate
29 prosecution proceedings was refused.

30 On the one hand we were confronted

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1 by a company that was resisting the union with
2 all the weapons available to it; by a management
3 that had twice been found guilty of picket-line
4 offences against union members, and had been
5 bound over by the courts to keep the peace;
6 that had made inflammatory public utterances
7 of refusal to sign a contract with the union,
8 and under these circumstances the Labour
9 Relations Board had refused us leave to
10 prosecute. On the other hand, during
11 the same industrial dispute, twenty-five trade
12 unionists who participated in a peaceful
13 march to protest the use of injunctions in
14 industrial disputes were thrown in jail,
15 having been found in contempt of court. As
16 the Ontario Federation of Labour puts it;
17 'It is most difficult in such circumstances
18 to convince the ordinary worker in the plant
19 that the law treats both parties equally".

20 This brings our case study of
21 the Tilco Plastics dispute up to the Feb
22 23-24 demonstrations organized by the
23 Peterborough Labour Council to protest the
24 use of injunctions in industrial disputes. It
25 is now a matter of record that the 26
26 demonstrators charged were classed as pickets
27 by Mr. Justice Gale, found in contempt, and
28 sentenced to terms of imprisonment ranging
29 from fifteen days to two months.

30 Labour's reaction to the

conviction and the harshness of the sentences

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1 is also a matter of record. It is to be
2 found in the pages of the two-volume
3 Report of a Study on the Labour Injunction,
4 edited by A.W.R. Carrothers, and prepared as
5 an aid to your enquiry. Accordingly, to
6 avoid repetition, we shall confine our
7 comments on the Feb 23-24 demonstration,
8 and its aftermath, to a few specific points.

9 Because of the tendency of
10 various editorial writers to embellish strike
11 reports with such terms as "violence,
12 anarchy, chaos" and the like, it seems important
13 to firmly establish the fact that all the
14 evidence concerning the Feb 23-24
15 demonstrations in Peterborough points to the
16 fact that the marchers were orderly and
17 peaceful.

18 In this regard we refer your
19 Commission to the report appearing in
20 the Peterborough Examiner on Feb 23, 1966
21 the first day of the demonstration which
22 says in part:

23 "Chief Jack Shrubbs of the
24 Peterborough city police said
25 17 police officers were on
26 duty near the plant at one point
27 but there had been no incidents
28 and the number was reduced by about
29 half. He said demonstrators,
30 walking two abreast and carrying



1 placards were 'very orderly'
2 and he didn't anticipate any
3 problems."

4 This was confirmed by Attorney
5 General Arthur Wishart, who, in a statement
6 to the legislature on February 24, 1966, said:

7 "There has been no violence
8 in the assembly at Peterborough,
9 I have been in constant
10 touch with the Crown Attorney,
11 the Sheriff and the Chief
12 of Police at Peterborough,
13 through the officials of my
14 department, and I have the
15 assurance of all these
16 responsible persons that the
17 picketing and actions have
18 been orderly."

19 We would draw your attention to
20 the Attorney General's concluding remarks
21 at that time:

22 "There is no law preventing
23 a lawful assembly, and it
24 would be a shocking commentary
25 on our community if we ever
26 contemplated that such
27 assemblies should be restricted."

28 We draw your Commission's
29 attention to the pertinent observations of
30 James Renwick MPP (Riverdale) on the matter



1 of injunctions in labour disputes, and his
2 particular references to the legal aspects
3 of the Tilco demonstrations, that appear
4 in a budget speech given in the House on
5 Monday, July 4, 1966.

6 Finally it is enlightening
7 to examine the reaction of the community
8 of Peterborough, to the extent that it is
9 reflected in the editorial columns of the
10 Peterborough Examiner,

11 (a) immediately after Chief Justice G.A.
12 Gale had found the 26 guilty of
13 contempt and (b) following the
14 upholding of the conviction by the
15 Ontario Court of Appeal.

16 (a) Peterborough Examiner, June 9, 1966

17 "In the case of labour
18 injunctions, it is apparently
19 the view of organized labour
20 that Ontario and other provincial
21 governments had been so
22 steadfast in their refusal
23 to listen to labour's objections
24 to injunctions law over a
25 period of years that other
26 more dramatic approaches had
27 to be tried. This view is
28 by no means unwarranted. The
29 Government of Ontario has shown
30 little or no inclination to



1 consider labour's criticisms
2 of injunctions law even after
3 it became clear at Oshawa that
4 civil disobedience was being
5 employed and even when the
6 Opposition and the Ontario
7 Bar Association were calling
8 for a review of the law.

9 Moreover, the law itself
10 has been applied in an
11 irresponsible fashion since
12 charges were not laid in
13 the even more flagrant Oshawa
14 case but were laid in
15 Peterborough. If the
16 Ontario government had
17 shown some willingness to
18 listen to labour's complaints,
19 and to review the law, before
20 or after the Oshawa incident,
21 the Tilco demonstrations
22 might never have happened.
23 Therefore the Ontario government
24 must bear a share of the
25 responsibility for the disregard
26 for the law which Chief
27 Justice Gale so deplores."

28 This editorial makes reference
29 to labour's continued complaints against the
30 use of injunctions in industrial disputes.

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1 The Ontario Federation of Labour catalogued
2 its official representations on the matter in
3 its 1966 submission to the Government of
4 Ontario, which has been made available to
5 your Commission.

6 We quote:

7 "Since 1957 the Federation has
8 protested in briefs to this government and
9 its agencies against the use of injunctions
10 in labour disputes on ten separate occasions
11 (appendix "A"). This does not include the
12 many times individual unions have raised
13 this question in their submissions to the
14 government and its various bodies".

15 (b) Peterborough Examiner, October 26, 1966

16 "No one, who has thought deeply
17 about it, could properly support
18 a legal process which, because
19 part of it is inadequate and
20 faulty, turns dissenters into
21 criminals over night. But
22 astonishingly enough, this
23 is the attitude taken by
24 the courts and by a large number
25 of lawyers and legislators,
26 including the Attorney-General
27 of Ontario."

28 It cannot be anything else but
29 clear that the Ontario Labour legislation under
30 which certification and collective bargaining



1 is supposedly arranged has grave weaknesses.
2 The Ontario Government grants as much, since
3 it has appointed Mr. Justice Rand to enquire
4 into injunctions as used in labour disputes.
5 And since these judgements arise mainly out
6 of strikes, the connection should be plain.

7 It must be said, too, that the
8 Labour leaders who demonstrated at Tilco
9 Plastics had every expectation of being
10 brought before the courts and were willing
11 to risk this prospect as a means of drawing
12 attention to a wide spread grievance. But
13 it is equally clear that in Oshawa, previously,
14 a more flagrant violation of an injunction
15 was ignored by the Attorney-General and by law
16 enforcers. Altogether, a relatively minor
17 strike, and a trivial bargaining matter has
18 thus been turned into a "cause celebre" for
19 organized labour. And this has been
20 accomplished by some insupportable attitudes
21 which still prevent workers from organizing
22 themselves into an effective bargaining unit.

23 But at what a cost to society, to
24 labour, to the courts, and to the taxpayer?
25 Though judges may cling to their assertions
26 that they are dealing, and can only deal with
27 the law, in this case the judiciary had
28 legislated against public dissent by turning
29 it into criminal behaviour and has done
30 it badly into the bargain.



1 We have spent a considerable
2 time in reviewing the background to the
3 Tilco Plastics dispute, particularly with
4 respect to collective bargaining aspects,
5 and in drawing together newspaper reports
6 and editorial comments pertinent to this
7 dispute, because we felt that it was
8 in this area that we could maximize our
9 contribution to the objectives of the enquiry
10 you have been commissioned to undertake.

11 We fully recognize that the
12 case against the use of injunctions in labour
13 disputes has been made by many reputable
14 authorities over the years. We further
15 recognize that at this stage in your enquiry
16 other submissions will have directed the
17 attention of your Commission to the pertinent
18 source material, and in developing their case,
19 will have made broad-ranging references to it.

20 In stating our general views
21 therefore, particularly where they are substantiated
22 by reference to authoritative sources, a certain
23 amount of repetition is probably unavoidable.
24 In an endeavour to ensure that such duplication
25 of effort is not excessive, we shall restrict
26 ourselves to a few salient points in the
27 injunction dialogue.

28 (1) Experience has shown
29 us that when an employer makes application for
30 an injunction his basic purpose is to use it as



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1 a strike-breaking weapon. Invariably the newly
2 organized, low wage and relatively small
3 establishment will rush for an injunction
4 during the first days of a strike. The first
5 few days of any labour dispute are usually
6 critical. If an employer obtains an injunction
7 prohibiting or restricting picketing during
8 this period, he has got what he wants.
9 Usually he need go no further. In this
10 case of an ex parte or interim injunction he
11 has broken the union usually without a hearing
12 and without having to prove any kind of case.

13 In a recent occasional paper sub-
14 mitted to a national conference on labour
15 legislation held under the auspices of the
16 Canadian Labour Congress, John Osler, Q.C.
17 describes the effect of a restrictive
18 injunction on striking workers.

19 "A strike which commenced with the
20 enthusiastic support of the
21 great majority of the employees
22 as witnessed by their readiness
23 to participate in a picket
24 line, may be transformed in a
25 matter of hours into a proceeding
26 of which the only evidence
27 is a forlorn band of two or
28 three pickets, at one or two
29 entrances, carrying banners
30 bravely proclaiming that



1 they are on strike for their
2 rights --- All too frequently
3 the employees whose activities
4 on the picket line are pro-
5 hibited are bewildered and
6 badly demoralized. They are
7 not aware of having done
8 anything seriously wrong,
9 they are very much aware of the
10 need for improvement in
11 their working conditions
12 and suddenly the power and
13 majesty of the state is enlisted
14 to prohibit them from demon-
15 strating and requesting
16 support for their cause.
17 Surely, admitting the right to
18 strike, workers should be able
19 to demonstrate their own
20 convictions in the rightness
21 of their cause and to enlist
22 the support of others without
23 being hampered in their efforts
24 to do so and made to look and
25 feel like criminals."

26 (2) The legitimate and useful
27 purpose of an injunction, particularly where
28 real property is threatened by action that
29 cannot be reversed, is the preservation of
30 existing conditions until the final determination

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1 of rights. It is precisely because the injunction
2 fails to do this in a strike situation, that
3 it is a totally unsuitable legal instrument.
4 Rather than preserving the status quo, by
5 prohibiting or restricting the picket-line
6 the injunction throws the balance of power
7 to the side of management. The removal
8 of the picket-line provides the anti-union
9 employer with the conditions necessary for
10 a successful campaign to persuade workers
11 to return, or to enlist and ferry new
12 employees into the strike-bound plant.

13 Support for this view was
14 given by U.S. Supreme Court Justice F. Frank-
15 furter:

16 "The situation does not remain
17 in equilibrium awaiting
18 judgement upon full knowledge.
19 The suspension of activities
20 affects only the strikers;
21 the employer resumes his efforts
22 to defeat the strike, and
23 resumes them free from the
24 interferences. Moreover,
25 the suspension of strike
26 activities, even temporarily,
27 may defeat the strike for
28 practical purposes and fore-
29 doom its resumption, even
30 if the injunction is later lifted."



1 This perhaps is the basic
2 argument in the case for changing the law
3 with respect to the use of court injunctions
4 in industrial disputes. By prohibiting or
5 limiting pickets, they tend to place the
6 state on the side of the employer and upset
7 the balance of power, not only after a strike
8 takes place but in the breakdown of collective
9 bargaining which led to the strike.

10 (3) The argument that the
11 courts never grant injunctions against
12 picketing unless there is real or threatened
13 damage to property, injury to person or a
14 breach of the peace is no answer to the above
15 assertion. If these things occur, then
16 the law and the police are at hand just as in
17 any other situation.

18 Indeed nothing occurred during
19 those first days of the strike at Tilco
20 Plastics, that would warrant the granting of
21 an ex parte injunction, the ultimate effect
22 of which, by prohibiting picketing, was to
23 break the strike and destroy the union.

24 Nothing occurred in the strike
25 at this small establishment, involving some
26 fifty girls and a boy or two, that the police
27 of Peterborough and the laws of the land
28 couldn't handle.

29 Regrettably there were incidents
30 on the picket line and very properly they were

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1 dealt with by the local magistrates. For
2 example, on January 27, 1966, Harold Pammett,
3 co-owner of Tilco Plastics Ltd., appeared
4 in Magistrate's Court where he was bound over
5 to keep the peace on his own recognizance
6 for one year under threat of forfeiting a
7 \$1,000 bond. The plant co-owner and manager
8 was charged with causing a union representative
9 to fear he would suffer personal injury.

10 Early in March another Tilco co-owner, Donald
11 Tipp, appeared in court and was fined \$10
12 and costs for assaulting one of the strikers
13 on the picket-line.

14 Indeed the widespread judicial
15 practice of granting injunctions in labour
16 disputes to deal with these kinds of incidents,
17 is a gross distortion of the original purpose
18 of injunctions, which, as outlined above,
19 was to protect real property from damage pending
20 a trial on the matter at issue.

21 In this respect it is significant
22 that the Report of a Study on the Labour Injunction
23 in Ontario, commissioned by the Ontario
24 Department of Labour, reveals (a) that a
25 relatively small proportion of injunction
26 disputes in strike situations even come to
27 trial (b) that the great majority of
28 injunctions are granted "ex parte" on
29 affidavit evidence without the union being
30 present, and from this, by inference, we can



1 assume they were sought, obtained and used
2 to serve a purpose other than the legal
3 purpose intended.

4 We submit that this purpose
5 is not to protect property but to diminish
6 the effectiveness of picketing and effect
7 the outcome of the strike - in short, to do the
8 very opposite of what injunctions are supposed
9 to do and change the status quo by favouring
10 one side in the dispute.

11 It will not have excaped the
12 attention of your Commission that in the course
13 of the study of injunctions referred to above,
14 two of the legal experts consulted by the
15 Ontario department of labour have recommended
16 abolition or limited use of injunctions in labour
17 disputes.

18 We refer, of course, to the
19 conclusion of K.W. Wedderburn, professor of
20 law at the London School of Economics, that
21 he would prefer to see injunctions in labour
22 disputes abolished (vol 2.p.672).

23 At the same time Benjamin Aaron,
24 professor of law and director of the Institute
25 of Industrial Relations at the University of
26 California, feels that Canada might avoid
27 the violent reaction to the abuse of labour
28 injunctions which the United States experienced
29 prior to the enactment of the 1932 Norris-La
30 Guardia Act, by initiating policies providing



1 for limited use of injunctions.

2 A.W.R. Carrothers, editor and
3 director of the above study, provides a summary
4 of the case against the injunction in his
5 book "The Labour Injunction in British
6 Columbia", CCH, 1956, written when he was at
7 the University of British Columbia. For
8 obvious reasons we need not dwell on the
9 10-point case he makes against injunctions.

10 Equally obvious is the fact
11 that your Commission is well acquainted with
12 the criticism of the use of injunctions in
13 labour disputes, expressed by Professor Bora
14 Laskin (now Mr. Justice Laskin of the Ontario
15 Court of Appeal) in the Canadian Bar Review
16 in 1937. Nevertheless, the case he made 30 years
17 ago is still valid, and well summarizes
18 the issue.

19 "1. They are granted upon affidavit
20 evidence; there is no examination
21 and cross-examination of witnesses
22 or the careful sifting of facts,
23 but the judge, sitting without
24 a jury, is asked to choose
25 between conflicting documentary
26 statements in which both sides
27 strain the truth, to say the
28 least.

29 2. They are prepared by the
30 complainant's counsel and



1 and accepted by the Court with
2 very little ceremony.

3 3. They prejudge the issues
4 involved in a dispute by acting
5 as strike-breakers.

6 4. They are couched in broad
7 language and in such far-reaching
8 terms that they implant a fear
9 in men more potent than does
10 the criminal law.

11 5. They endow the owner of a
12 business or of property with a
13 militant power, little short
14 of sovereignty.

15 6. They place the judiciary,
16 as far as the labourer is
17 concerned, in the ranks of
18 the employers.

19 7. They arouse a resentment
20 and antagonism that often
21 leads to active violence
22 where there was none before.

23 8. They circumscribe union
24 activity far beyond the needs
25 of the particular case.

26 9. They generally issue
27 ex parte and quite perfunctorily,
28 on a false analogy, to cases
29 involving real property in
30 which, on occasion, prompt



1 action may well be necessary."

2 This then concludes the presentation
3 of our views concerning the growing use of
4 injunctions in labour disputes. We believe
5 the practice is bad because it creates
6 injustice and inequality within the collective
7 bargaining context under consideration.

8 Many employers, at best, give
9 only grudging recognition to the principles
10 of union representation and collective bargaining
11 outlined in the Labour Act. Other employers
12 would still deny even these fundamental rights.
13 In the injunction they have discovered a useful
14 ally.

15 Accordingly we submit that:

16 (1) The use of injunctions
17 whether they be ex parte, interim or permanent,
18 in industrial disputes, be abolished by law.

19 (2) Section 12 of the Ontario
20 Labour Relations Act be strengthened by a
21 clear definition of "bargaining in good faith"
22 and that adequate penalties be provided in
23 the event of a breach of this Section.

24 (3) The Labour Act be amended
25 to ensure that every worker who has gone
26 on strike in a manner sanctioned by the Act,
27 have his job protected until the conclusion
28 of the strike.

29 (4) The use of strike-breakers
30 during a legal strike be forbidden by law."



1 All of which is respectfully
2 submitted.

3 MR. POLLOCK: Thank you very
4 much, Mr. Watson.

5 Perhaps we can start from the
6 end and the beginning at the same time because
7 the first question I have is in relation
8 to bargaining in good faith and you refer to
9 it in your submission.

10 It is a very perplexing problem
11 that is being raised now and probably existed
12 for a long time, as to what bargaining in
13 good faith means. How would you define
14 "bargaining in good faith" and how can you
15 determine whether somebody is bargaining in
16 good faith by relating it to some type of
17 standard?

18 MR. WATSON: Under the present
19 law it is pretty hard to define. We feel
20 that the legislation should be changed so that
21 it isn't so hard to define. There have been
22 cases before the courts and some of them have
23 been thrown out and some of them have had
24 some recognition by the courts that there
25 were companies bargaining in bad faith or
26 weren't bargaining in good faith. We feel
27 quite humbly that this is a question that has
28 to be changed by the Labour Relations Act
29 so that it is not as difficult to determine
30 bargaining in bad faith. We feel quite

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1 definitely that there is considerable that
2 takes place and not necessarily restricted
3 to companies. I would suggest that some
4 unions possibly do this for whatever reasons
5 they would employ. But what we are concerned
6 with is the fact that many companies do
7 and whoever does it should have some regulations
8 that would prohibit that and bring them to
9 task for not bargaining in good faith.

10 MR. POLLOCK: The problem,
11 of course in this whole area is the tactical
12 approach taken by both sides. You say it
13 has been held that the company offer is
14 \$9 to the union and says to take it or leave
15 it - that is not bargaining in good faith.
16 But if he meets with them one week and says
17 "I will give you \$2 and next week I will
18 give you 2 more until you get up to \$9",
19 that is bargaining in good faith.

20 Now, unless you can open up
21 people's minds you can't really tell what
22 they are doing. That is the difficulty.

23 MR. WATSON: It is very
24 difficult and I think some of the flagrant
25 cases, they are not so hard to detect and
26 there have been a number of them. For
27 instance, I was a little concerned with
28 this latest strike we have at the Spinrite
29 Yarns and I went to talk or assist Mr.
30 Skurjat in the negotiations. They had

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1 continued their bargaining and I will just give
2 you an example of where this is bad faith.
3 We haven't choices, but I am just giving you
4 an example.

5 The company and the union had
6 bargained and they had pretty well cleaned
7 up all the language clauses in the contract
8 and, in fact Mr. Skurjat, as I told him, had
9 gone further along the lines of bending to
10 try and get a settlement than I would have
11 done under the circumstances. I went into
12 this situation and I felt we were headed into
13 trouble and it subsequently proved that we
14 were right. In the 11th hour, just a meeting
15 before I arrived at the scene the company
16 threw in a proposal for \$50 thousand
17 performance bond. This is a major proposal
18 by either party and it would just be like
19 after having settled maybe the union security
20 by saying "We will accept a voluntary check-off"
21 and then come in and throw in that we had to
22 make sure that everybody who was hired at
23 that time, had to sign up at the union office
24 before they were even considered by the company.
25 It was literally a bombshell in the eleventh
26 hour. Now I don't consider that as bargaining
27 in good faith because there had been no indication
28 over months and months and months of bargaining -
29 I would say about five months - no indication
30 that the company was even thinking about this.



1 THE COMMISSIONER: Is such a
2 bond ever given in these cases?

3 MR. WATSON: No. Normally
4 it has been opposed by companies and some
5 companies haven't pushed it and so they have
6 got a settlement. Other companies pushed it
7 and have no settlement or the strike took
8 place with varying degrees of success.

9 MR. POLLOCK: That is an
10 old-fashioned tactic and I haven't heard
11 of the performance bond for many years.

12 MR. WATSON: In the disastrous
13 strike at Kaufmans in Kitchener, this was one
14 of the tactics he employed and I am not saying
15 he used that in the eleventh hour. In this
16 case it was brought up in the eleventh hour.

17 THE COMMISSIONER: Who makes
18 the bond?

19 MR. WATSON: The union has
20 to put up a bond of \$50 thousand which they
21 would have to forfeit.

22 THE COMMISSIONER: But does
23 it purport to be a bond signed by the union
24 and the union men?

25 MR. WATSON: We would have
26 to raise the money through a bond or ----

27 THE COMMISSIONER: You go to
28 a surety company and they arrange it.

29 MR. WATSON: It could be but
30 I don't know of any surety companies that we



1 asked about this. There were no surety
2 companies that were issuing any bonds. Their
3 mechanism didn't seem to worry them. It was
4 just the fact that they knew that this would
5 be unacceptable to the union.

6 Now, for instance, Mr. Commissioner,
7 it is a rather ludicrous situation. They
8 hadn't offered any union security and even
9 if they had, we could be charged with violation
10 of the contract. The contract could be
11 violated by a non-union employee and if it
12 was violated, then our bond was sacrificed
13 because there had been a stoppage of some
14 sort in that plant.

15 THE COMMISSIONER: What I have
16 in mind is that a union is not a corporate
17 body and either you would have to bond all the
18 employees or perhaps those who sign it.

19 MR. WATSON: Yes, it is a
20 rather difficult thing, I would think, to get
21 into effect and properly into operation. I
22 don't think they were concerned with that
23 aspect of it.

24 MR. POLLOCK: Well supposing
25 the same trustees who want property and the
26 union could enter into the bond and arrange
27 it on the same basis.

28 MR. SKURJAT: Yes. The whole
29 strike at Spinrite was involved and that was
30 the whole issue that kicked off the strike.



1 MR. POLLOCK: They must have
2 felt fairly strongly about it to let it go
3 to strike - that is the company.

4 MR. WATSON: I don't know if
5 the company felt so strongly about a bond.
6 I think, in our opinion, there was strength
7 in their convictions that they didn't want
8 any collective bargaining agency in their
9 plant.

10 MR. WHITEHOUSE: I think the
11 point we make in our brief, Mr. Pollock, is
12 the kind of item that is thrown in, not really
13 as a meaningful item but simply to bolster
14 their original anti-union attitude of the
15 employer - in other words, a gimmick is thrown
16 in to ensure that they will not enter into
17 a bargaining relationship.

18 MR. POLLOCK: They start to
19 get afraid that you are going to accept what
20 their terms are.

21 MR. WHITEHOUSE: Yes.

22 MR. SKURJAT: Mr. Commissioner,
23 I might say that we endeavoured to have the
24 company explain what it would mean or how it
25 would apply and the company failed. They
26 said that is all we want. We want a performance
27 bond and that's it. They couldn't explain
28 and they couldn't give us any examples of its
29 application or where it applied. They said
30 they heard it applies and somebody had it and



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1 they couldn't give us any, it was just a
2 completely ridiculous situation and yet it
3 was at a time when we believed that the
4 agreement and the negotiations were finalized.
5 Also, I have to remind you that the company
6 applied for an injunction and the injunction
7 was granted in this situation as well.

8 MR. WATSON: I not only
9 went into this situation to get first-hand
10 information, but on the day of the strike I
11 decided that I would find out first-hand what
12 took place on the first day of the strike.
13 I went into Listowell on Monday morning,
14 November 21st, and I was on the picket line
15 about 5:30 in the morning. This company, I
16 am sure, had this strike planned when they
17 brought in this performance bond suggestion
18 and they also had planned to have an injunction
19 and when we say that the standard procedure
20 takes place, or a certain pattern develops,
21 the same thing happened in Listowel.

22 At 6:00 o'clock in the morning
23 the employers were there with their lawyers
24 inside the gates snapping pictures of people
25 on the picket line with their tape recorders
26 and their flash cameras and there were, for
27 instance, at around 6:00 o'clock we had
28 probably 200 or 250 pickets. They were
29 just standing around, they were just milling
30 around the plant and the other gates of the

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1 plant were closed so the employees were
2 milling around and no one had come to work.
3 They had expected that there would be some
4 scabs who would try to go through the picket
5 line but they were taking pictures of the
6 crowd milling around and I am sure that
7 these pictures would have been used if no
8 further evidence had been brought out, as
9 an indication of how could pickets ever
10 get through a crowd like this that is
11 massed in front of a gate. But that plant
12 didnt even open.

13 THE COMMISSIONER: Not pickets.

14 MR. POLLOCK: But how could
15 employees.

16 MR. WATSON: Scabs, I am sorry,
17 I didn't give you the right term. So they
18 were taking these pictures repeatedly. Now
19 these pictures they kept on taking right up
20 until 7:00 o'clock and then the employees
21 started to come in and there were a number
22 of employees. Threescabs got through the
23 picket line and the foremen were approached
24 and they were talked to and we suggested to
25 them that they do nothing other than supervisory
26 duties and they agreed. They went through
27 the picket line with a bit of good-natured
28 joking and so forth and some of them had their
29 hands on the hood of a car but it was just
30 good-natured stuff and there was a picture taken

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1 and I am sure that was probably used as
2 evidence of violence. But it was all in
3 joking and all in fun, the same as you'd
4 maybe do the same thing yourself in the good
5 spirit of the day on the first day of the strike.
6 So that two of the strikers or the scabs went
7 through and they were driven through by
8 their father and this guy bruted his way
9 through the picket line without stopping
10 and he had one of the pickets spilled over
11 on his hood and it was a good thing he was
12 spilled on the hood because if he hadn't been
13 on the hood he would have been under the
14 wheels and there would have been serious
15 injury.

16 THE COMMISSIONER: Why would
17 he be up there? What was he doing?

18 MR. WATSON: He was walking
19 up and down in front of the gate and this
20 guy didn't stop to be interrogated, he didn't
21 stop at all, he ----

22 THE COMMISSIONER: Well,
23 really, nobody had any right to stop him.

24 MR. WATSON: We do consider
25 we have the right to stop them, Mr. Commissioner,
26 with great respect. We have to acquaint the
27 people that there is a stike on.

28 THE COMMISSIONER: But they
29 don't have to listen to you. Why do they
30 have to stop?



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1 MR. WATSON: Well, the
2 ordinary common restrictions of the highway.
3 This is a highway.

4 THE COMMISSIONER: I am talking
5 about the rights of an individual.

6 MR. WATSON: All right then,
7 if you were walking on that street at the
8 time and someone knocked you down, you would
9 charge him under the Traffic Act.

10 THE COMMISSIONER: Yes.

11 MR. WATSON: And this person
12 didn't stop to wait until the way was clear.
13 Everybody can enter that plant.

14 THE COMMISSIONER: But he
15 knew that this man was not going to get out
16 of the way.

17 MR. WATSON: Well, the guy
18 was walking and, with great respect, this
19 is one of the fundamentals and one of the
20 very minimum things that we insist on, that
21 we have the right to at least talk to people
22 and acquaint them. This was the first day
23 of the strike, mind you.

24 THE COMMISSIONER: Well, I
25 think that is where you get into trouble,
26 because you haven't any business to try
27 and force a person to listen to you.

28 MR. WATSON: Well, we think
29 we do.

30 THE COMMISSIONER: I know that,

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1 but that doesn't make it proper.

2 MR. WATSON: Well, maybe it
3 isn't proper.

4 THE COMMISSIONER: Now, don't
5 misunderstand me.

6 MR. WATSON: Well, I do
7 misunderstand you, sir, I do think that we
8 have the right.

9 THE COMMISSIONER: Now, just
10 a moment. This meeting is going to be conducted
11 properly and I just want to get the ideas
12 clear. If you think you have the right to
13 stop people against their will, then I think
14 you are wrong.

15 MR. WATSON: Well, I think
16 that we have the right to ensure the people
17 are stopped, to talk to them and try to
18 persuade them from going into that stike-
19 bound plant.

20 THE COMMISSIONER: All right,
21 that is your view.

22 MR. WATSON: I am just setting
23 it out as my view and I think that is the very
24 minimum that we should have.

25 THE COMMISSIONER: I can
26 understand your view that that is the very
27 minimum that you ought to have and it may be
28 that you should, but I am just speaking about
29 the justification for it in law.

30 MR. WATSON: Let me assure you

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1 of another thing, Mr. Commissioner. There
2 were police on that picket line that day
3 who would guard against any incidents taking
4 place. I went over to the Chief and informed
5 him that this driver had rammed his way
6 through that picket line and there could
7 have been an injury. The guy was shaken
8 up and scraped a bit but he could have been
9 under the wheels and this guy didn't even
10 slow down, and at least if there are a number
11 of people there in ordinary driving habits
12 people are supposed to avoid an accident
13 and he didn't. He deliberately barged into
14 that picket line and this fellow was spread-
15 eagled over the top of his hood, feet first
16 going into that driveway. I am surprised
17 the company didn't charge him with violation
18 or trespassing or something of that sort,
19 but I am being facetious now.

20 MR. POLLOCK: I suppose
21 you could charge the fellow with being a
22 scab too, because he went into the plant.

23 MR. WATSON: No, he didn't
24 go in, he was just driving his daughter.

25 MR. POLLOCK: I mean the
26 fellow sitting on the hood of the car.

27 MR. WATSON: Well, we were
28 sympathetic to his position.

29 Now getting back to this situation
30 again, I went over and informed the Chief of

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1 Police and - by the way, there was another
2 20 Provincial Policemen standing ready to
3 be called in if the local police wanted them
4 but they were not called in, except that
5 night when these two girls were being
6 escorted out of the plant, they had 20
7 Provincial Police down there and when we
8 only had four or five pickets on the line -
9 that was at 9:30 that night - and this
10 is how grave and how much the people were
11 inflamed at the attitude of that person
12 who was barging through. Now this is the
13 thing that causes violence on a picket line,
14 not actions of employees.

15 Now there is a bit, on the side
16 of the union, I suppose there is a bit of
17 jostling and so forth, that took place on
18 that first day of the strike, their spirits
19 were high. And I suppose if the police
20 wanted to, they could have laid charges; but
21 none were laid. And the point I am getting
22 at is not what I have said up to this time,
23 but the point I am getting at is that they
24 said "We have taken note of all these things
25 and we will let you know in good time".
26 The company had already applied for the
27 injunction. They didn't try to take anyone
28 through the picket line for the next two days
29 and the injunction was granted Wednesday
30 night.



1 THE COMMISSIONER: Didn't they
2 go through with automobiles?

3 MR. WATSON: No one went
4 through at all, just the foremen. They
5 didn't try to operate that plant at all for
6 the next two days. They were sitting back
7 waiting and relying on an injunction to be
8 granted. And this is the pattern that is
9 developing. The policemen weren't concerned
10 about trying to enforce the law and let that
11 plant run. If that plant should have been
12 running in those days, then they should have
13 operated that plant and the employees should
14 have gone in and if there was any action on
15 our part in violation of the law, then our
16 people should have been charged, the same as
17 that person should have been charged when
18 he barged through, in my opinion. But nothing
19 took place, they just let things drift until
20 Thursday.

21 MR. POLLOCK: Who is "they"?

22 MR. WATSON: The company. I
23 am sure it must have been the company. They
24 didn't ask the employees to come in. They
25 told them to stay home. Now the police were
26 there and our pickets were there but no
27 employees tried to go through the picket line.
28 On Wednesday night we were informed that it
29 was cut down to two and the plant and employees
30 of close to 300 people, they limited them to



1 two pickets.

2 Now the company, in addition
3 to that, kept claiming that there shouldn't
4 be any pickets. Based on what had taken place
5 up to that time on one day of a strike and
6 they were the ones that were on the offensive.
7 They were trying to get a court hearing, a
8 further court hearing so that the interim
9 order that was granted limiting the two, that
10 they could eliminate picketing altogether.
11 We had our strike headquarters in the form
12 of a trailer on the other side of the road
13 to the plant and the only thing that the
14 judge did that made the decision on the
15 injunction, was to extend the injunction to
16 the point where we had to move our strike
17 headquarters - the trailer - 200 yards away
18 from the plant gate. This was - there was
19 no evidence that there was any intimidation
20 because there were only two pickets during
21 this time when this order was in effect, but
22 they still got an order prohibiting that
23 trailer from being within 200 yards of that
24 plant. I can't see the reason behind that
25 at all, but it seems like apparently they
26 can provide no rule on injunctions at all,
27 they can grant, including a complete injunction
28 against picketing.

29 Now, our lawyers informed us
30 that it would be foolish to try and gain any

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1 further pickets because we were very incensed
2 at being reduced to two and we were very incensed
3 that we had an injunction whatever.

4 THE COMMISSIONER: Did you
5 ever read the affidavits that were before the
6 judge on the application?

7 MR. WATSON: No, because it
8 never came to trial.

9 THE COMMISSIONER: But did you
10 ever read them?

11 MR. WATSON: No.

12 THE COMMISSIONER: Well, why
13 didn't you, to see what they said?

14 MR. WATSON: Well, quite
15 frankly, we are not very convinced that the
16 trial by affidavit was going to accomplish ----

17 THE COMMISSIONER: No, but
18 what you say is that these injunctions are
19 issued without any proper evidence. And you
20 emphasize the fact that you couldn't cross-
21 examine and you were simply helpless. But
22 I would have thought the first thing you
23 would want to know was what these people had
24 set forth in their affidavit.

25 MR. WATSON: Well, our legal
26 counsel was in a position to check them.

27 THE COMMISSIONER: Did he
28 get copies of them?

29 MR. WATSON: Well, we were
30 informed what was in them, yes; hammering on



1 car hoods but the people were doing that in
2 a joking manner and this is what I indicated
3 to you before. Part of the affidavit
4 was hammering on car hoods and I saw people
5 themselves and I was standing right next to
6 them and a foreman would be going in and one
7 of the employees would be kidding. In fact,
8 he would take a punch at his jaw and it was
9 just in joking.

10 THE COMMISSIONER: Well,
11 people don't do that for fun when they are
12 incensed.

13 MR. WATSON: But these people
14 weren't incensed with this foreman. We had
15 agreed that there would be no attempt made
16 to keep those foremen out.

17 THE COMMISSIONER: But why
18 would you make an attempt to keep anyone out?

19 MR. WATSON: Why not? We
20 are on strike, mind you, and these people
21 are fighting for their very jobs and their
22 collective bargaining rights.

23 THE COMMISSIONER: Well, I
24 agree it is a most powerful influence on the
25 mind, but you know many times we feel like
26 lambasting somebody else and we don't do it
27 and why?

28 MR. WATSON: But these people
29 weren't lambasting.

30 THE COMMISSIONER: No, no, but



1 I say many of us have, at times, felt like it.

2 MR. WATSON: Unless it was
3 a mental lambasting.

4 THE COMMISSIONER: Yes, and
5 we restrain ourselves, why? Because we
6 are not permitted to do that.

7 MR. WATSON: Well, I would
8 say with great respect, sir, that if our
9 jobs were at stake, we don't know just exactly
10 what we would do. If these people were living
11 in a small town and on low wages and the very
12 bread and butter that was coming to them was
13 being risked by these people who are going
14 through the picket line and this is enough
15 to get them provoked.

16 MR. POLLOCK: How small a
17 town is it?

18 MR. WATSON: It is two or
19 three thousand, something like that.

20 MR. POLLOCK: Do you think
21 the people who came to work there realized
22 there was a strike going on there at the
23 plant?

24 MR. WATSON: I would imagine
25 that they realized there was a strike going
26 on.

27 MR. POLLOCK: So to get to
28 the people to tell them there was a strike
29 going on, really was of secondary importance
30 because they knew there was a strike on.



1 MR. WATSON: They apparently
2 knew but there were other things that we express
3 to the people who go through a picket line
4 to try and dissuade them from going through.

5 THE COMMISSIONER: But you
6 see, the strike breakers were called by
7 telephone and were told there was a strike on
8 and, now this is Tilco and you are talking
9 about Peterborough.

10 MR. WATSON: I am talking about
11 Listowell and this was a larger plant that
12 is still on strike and has been on strike since
13 November 21st and this is the one who asked
14 for the performance bond. I am suggesting to
15 you that this company threw in the performance
16 bond proposal in the eleventh hour with the
17 full realization that they could get an
18 injunction that would continue to operate.

19 THE COMMISSIONER: Well, I
20 can easily understand that they put it in
21 simply to nullify any idea of negotiation.

22 MR. WATSON: Sure, to stop
23 us from getting an agreement.

24 THE COMMISSIONER: That is
25 probably the case.

26 MR. WATSON: Well we grant
27 that point anyway.

28 THE COMMISSIONER: What I wanted
29 to emphasize was that these things depend upon
30 your ideas of the scope of your proper action.

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1 Now don't think for a moment that I am saying
2 that I wouldn't likely do the same thing in
3 your case, I am not saying that at all. But
4 I am trying to get the realities of what took
5 place.

6 MR. WATSON: Well, let me
7 say this, that we feel the most limited steps
8 that a person should be allowed to take in
9 performing their duties as a picket, is to
10 interrogate people and to try and dissuade
11 them from going into the plant.

12 THE COMMISSIONER: Yes, they
13 will stop and listen, but they don't have to.

14 MR. WATSON: Well, they
15 have to stop.

16 MR. POLLOCK: Well, let me
17 stop you at that point, Mr. Watson. There
18 are many people whodon't subscribe to the views
19 that you hold. They are interested in their
20 own economic livelihood and they want to go
21 to work and you can talk until you are blue
22 in the face and they are going to say, "I am
23 going to work there, I am satisfied with those
24 conditions". You can persuade and talk and
25 cajole and do all kinds of things and these
26 people are still going to go it, so you are
27 wasting your time to even stop them and
28 talk to them.

29 MR. WATSON: But the difference
30 is this, that the first day three people went



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1 in and two of them breezed by that picket line.
2 The first day of the injunction, there were
3 about 40 or 50 scabs who went through the picket
4 line.

5 MR. POLLOCK: Why?

6 MR. WATSON: I would say the
7 picket line has a certain persuasive power
8 in itself.

9 THE COMMISSIONER: Yes, it has
10 and for the very reason that you have in mind,
11 that they will be stopped.

12 MR. WATSON: To stop and
13 talk to them.

14 THE COMMISSIONER: And if
15 they don't pay attention, you will become
16 worked up, as you say, in spirit and it is
17 a fact and they won't go in because of fear.

18 MR. WATSON: Well, with
19 regard to this affidavit you brought up, we
20 know that some of the affidavits were for
21 hammering on the hoods of cars, that is in
22 the Listowell thing.

23 MR. POLLOCK: This is at
24 Listowell?

25 MR. WATSON: Yes, and I am
26 talking about Listowell because I was there
27 and I viewed exactly what took place and the
28 hammering that took place on cars was on the
29 foreman's car and people were leaving to go
30 in and they were just hammering on them in a



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1 joking way, if you can imagine that, and in fact,
2 I saw one guy give the foreman a poke in the
3 jaw and he was just kidding him, he was a
4 good friend of the foreman.

5 THE COMMISSIONER: Well, I
6 thought we were dealing with the really more
7 serious situation in Peterborough.

8 MR. WATSON: I don't know if
9 it was more serious but I would suggest the
10 situation in Listowell with 300 and where we
11 were cut down to 2 pickets, is a more serious
12 situation than where we have about 60 employees
13 and they are cut down to about 12.

14 MR. POLLOCK: Did you have any
15 notice of the Listowell injunction?

16 MR. WATSON: No.

17 MR. POLLOCK: None whatever?

18 MR. WATSON: Yes, I think we
19 had 24 hour's notice.

20 MR. POLLOCK: Well, you had
21 more than 24 hours probably, if it was in a
22 notice, but did you file any affidavits to
23 support any evidence that would say it was
24 all in a joking manner and that this thing
25 was a joking thing?

26 Now, you were there, the judge
27 wasn't there.

28 MR. WATSON: Well, I would
29 say, with respect, Mr. Pollock, that anyone
30 hitting the hood of a car and banging, that



1 isn't violence.

2 MR. WHITEHOUSE: Could I say
3 a word at this point that you are making on
4 the questioning of the affidavits filed by
5 the employer?

6 I believe this is the same point
7 you made in Peterborough and Stan Rice attempted
8 to answer that in Peterborough. But I think
9 that this is a little more complicated than
10 simply saying we didn't think they had any
11 material point in the affidavit and I think
12 it was said probably better by John Osler
13 in his paper which, undoubtedly you have read
14 and I would like to read this to you, it says:

15 "The details of the court
16 activity will vary considerably
17 from province to province
18 depending on the legislation.
19 The rules of practice, the
20 details of the contact which
21 the court is led to believe
22 has occurred or will occur
23 and as the order is decreed
24 a discretionary one, the
25 background and natural
26 prejudices of the judge who
27 hears the case, no man living
28 is without prejudice and
29 although the great majority
30 struggle manfully to overcome



1 it, even judges are not immune
2 and, for this reason: the
3 exact outcome of the application
4 for injunction is seldom, if
5 ever, completely predictable."

6 And this is the point I want to make and I think
7 it perhaps answers your question "Why didn't
8 you challenge the affidavit?".

9 "However, if one may be permitted
10 to generalize, the resulting
11 material, and I feel from
12 reading a good number of the
13 cases, ~~that~~ the same would follow
14 in British Columbia, is that
15 almost always there will be
16 an order putting some restriction
17 on the strikers if it is shown
18 to the court that anything in
19 the nature of physical obstruction
20 is being present, any vile or
21 abusive language used, probably
22 by either side, any threats
23 being made or damage, whatever
24 done to a person, the clothing
25 of such a person, an automobile,
26 truck or any other property of
27 a person seeking access to a
28 plant. And, of course, if
29 the slightest degree of violence
30 has occurred. In addition the



mere presence of a large number
of persons standing or walking
in front of the entrance to
a plant will be considered
intimidatory by the great
majority of judges as will
anything that will probably
be understood by the term
'mass picketing'."

So, I assume the basis on which
the judiciary looks at this kind of affidavit
as applying to strikes, they would find cause,
whereas we would take the attitude that these
things would be better dealt with under other
laws by the police present and that the results
of such an injunction flowing from this kind
of minor action is quite out of proportion.
So that it is quite true that we probably could
challenge but if John Osler's position is
correct, then, of course, they would find
substance in points of the affidavit but we
would not accept this as the kind of affidavit
that would lead to an injunction.

THE COMMISSIONER: Of course,
you don't accept that as sufficient basis for
the issue of an injunction. Of course, there
is no doubt in the world that in your mind
and in everybody's mind, a mass does intimidate
and that is exactly what you have in mind. I
don't criticize you for it. You feel it is



1 necessary and you say that we have a right to
2 do that and all I am suggesting is that in our
3 present laws regarding the individual, you
4 haven't any right to require a man to stop
5 and listen to you. It may be desirable
6 that you do have but at the present time
7 you don't have it.

8 MR. WHITEHOUSE: But this
9 answers your question, I hope, as to why
10 we didn't challenge it.

11 THE COMMISSIONER: I have a
12 great respect for Mr. Osler, and he does mention
13 the fact that it is a rare individual who
14 doesn't have some prejudices. I happen to
15 have a prejudice against cigarettes, but I
16 think I can understand that fact and it doesn't
17 affect my thinking a bit. He admits that men
18 do consciously consider that they mustn't
19 be led in independent or neutral matters
20 by these more or less irrelevant prejudices,
21 and it is quite true that we act from, you
22 might say, the mental furniture of our minds,
23 but I think the history of our courts from
24 the last five or six or seven hundred years
25 will stand a good comparison with that of any
26 other people on earth.

27 MR. POLLOCK: I just want to
28 answer your query, Mr. Whitehouse. I think
29 that your answer answers part of the question.

30 THE COMMISSIONER: I would like

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1 to finish this first. What were you going
2 to say at the end?

3 MR. WHITEHOUSE: I just wanted
4 to get back to the original position raised
5 by Mr. Pollock in terms of bargaining in good
6 faith.

7 MR. POLLOCK: I just want to
8 say it answers part of the question because
9 what Mr. Osler says is that even if the affidavit
10 is true and you will agree that it is true,
11 that you suggest that that material contained
12 in that affidavit ought not to be enough to
13 grant the injunction.

14 MR. WHITEHOUSE: That is right.

15 MR. POLLOCK: That is your
16 position on law. You have another position
17 which you seem to mold into that as one on
18 fact, that is the one Mr. Watson was making
19 today that the facts as set out really aren't
20 the facts and there wasn't any attempt to do
21 these things and there wasn't this; it was
22 all good-natured. Those types of arguments
23 can be answered by the affidavit. You can
24 say there was no obstruction and you can say
25 that there was good-natured jostling and that
26 kind of thing and you won't get an injunction
27 in those circumstances.

28 You can establish it and I'm
29 not going to say that you are not going to
30 succeed.



1 MR. SKURJAT: Mr. Commissioner,

2 I would like to say a few words with regard
3 to affidavits. In the Tilco case affidavits
4 were not true. They were not true with many
5 aspects. Now, I can give you the details
6 where, in our opinion, affidavits were not
7 true. For instance ----

8 MR. POLLOCK: Let me stop
9 you there for a moment, Mr. Skurjat. You
10 should have given the details of that information
11 to the court at the time.

12 MR. SKURJAT: I appreciate
13 that but we were not given the opportunity
14 because it was an ex parte injunction.

15 MR. POLLOCK: You were given
16 the opportunity on Monday.

17 MR. SKURJAT: We were not
18 given the opportunity.

19 MR. POLLOCK: You were given
20 the opportunity on Monday. I put it to you
21 again; the injunction was granted late Friday
22 afternoon and it continued in effect on Saturday,
23 Sunday and Monday it was continued on consent.

24 MR. SKURJAT: Technically,
25 that may be so and I am sure you know how the
26 legal profession operates. A time for
27 injunction was granted, it was Thursday, or
28 Friday or Friday afternoon.

29 MR. POLLOCK: It was Friday
30 afternoon.



1 MR. SKURJAT: You try to get
2 a lawyer Friday afternoon and we were in a
3 situation where none of the lawyers with the
4 firm that we dealt was available. Frantically,
5 we obtained the services of another lawyer
6 who appeared on our behalf and there was no
7 time to prepare anything. There was no time
8 to prepare anything at all. I was in
9 Peterborough and he phoned me around 2:00
10 o'clock or so and I said "I have got you a
11 deal on 12 pickets, what do you think about
12 that" and I said "Look, I don't know anything
13 about it". Well, you know very well how
14 these things operate and that is all. We
15 were sitting there without being able to
16 picket. We complied with the court order on
17 Friday and we withdrew our pickets. So, it
18 is all very well to say "technically" but
19 how does it work in practice? Can you get
20 affidavits submitted by Mr. Pammett which
21 are half-truths?

22 MR. POLLOCK: Then you could
23 have gone down and appeared on Monday.

24 MR. SKURJAT: The damage
25 was already done. I am talking about the
26 ex parte injunction. What happened in the
27 case of ex parte injunction? We had no
28 notice.

29 MR. POLLOCK: Well, let me
30 answer that, if you want me to answer it.



1 The injunctions came into effect
2 late Friday afternoon and it was in effect on
3 Saturday. There was some evidence that there
4 might have been some people picketing on
5 Saturday but assuming there wasn't.

6 MR. SKURJAT: There was no
7 picketing on Saturday.

8 MR. POLLOCK: The plant wasn't
9 open for production on Saturday?

10 MR. SKURJAT: I believe it
11 was, yes.

12 MR. POLLOCK: Was it open
13 on Sunday?

14 MR. SKURJAT: No.

15 MR. POLLOCK: All right, then
16 on Monday, which is the next day that your
17 injunction was continued, it was open for
18 production. So, on that day you could have
19 appeared in a court in Toronto and told your
20 story.

21 MR. SKURJAT: When? Nobody
22 knew when the hearing would take place.

23 MR. POLLOCK: Your lawyer
24 knew that.

25 MR. SKURJAT: The lawyer
26 was waiting for hours and hours to get in there
27 and you know what would have happened? Even
28 if we were prepared to cross-examine the
29 company's lawyer wouldn't be prepared to
30 proceed. This is based on practice. The

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1 lawyer still has this. Then there would be
2 another week's adjournment and if we were
3 an
4 contesting it would be/automatic adjournment
5 for at least a week, where would our strike be?
6 Now, Mr. Pollock, you know very well how it
7 works and you ask for adjournments many times
8 yourself and, Mr. Commissioner, I am sure
9 you know how it works because you have granted
10 many of them. And that works in perpetuity.
11 Then someone else isn't ready and someone else
12 isn't ready and your strike is going down the
13 drain without one solitary picket at that plant.

14 MR. POLLOCK: But you don't
15 understand my point and you don't have to
16 cross-examine on that affidavit, to contradict.
17 You can go or send some of your witnesses or
18 whoever happens to be on the picket lines and
19 knows of these things and they can appear in
20 court at the hearing on Monday at the same
21 time that the order went on consent, you could
22 appear at that time and say that this is our
23 story and the evidence will be taken down
24 and the decision made on that day.

25 MR. SKURJAT: We didn't even
26 see the affidavits until Monday.

27 MR. POLLOCK: You saw one
28 for certain.

29 MR. SKURJAT: We saw the
30 notice for motion and that is all I saw.

MR. POLLOCK: You never saw the



1 order that was obtained ex parte?

2 MR. SKURJAT: Yes, the ex parte
3 order.

4 MR. POLLOCK: Did you not
5 see the affidavit that was signed with that?

6 MR. SKURJAT: I didn't see
7 the affidavits at that time. The affidavits
8 weren't served on me until Mr. - what is his name -
9 came to Peterborough and finally found me.
10 This is the point and it is very very difficult.

11 We were criticized for the
12 decision and we agreed to the 12 pickets and
13 looking back, I would say that that decision
14 was wrong but at the time, when you are faced
15 with nothing, you grasp for straws. What
16 were we to do? The lawyer from Toronto phoned
17 me and said "Look, I've got a deal for you,
18 now what do I do? Do I agree?". And I said,
19 "What if you don't agree?" and then it is
20 going to be adjourned and if it is going to
21 be adjourned ----

22 MR. POLLOCK: Well, perhaps
23 it might not have been adjourned and perhaps
24 you might have gone down to ask to see if you
25 might testify.

26 MR. SKURJAT: Yes, but what
27 would happen on that Monday afternoon? Would
28 we be allowed to picket or would we not be
29 allowed or would the order of the court continue?
30 Now, can you answer me with any degree of



1 certainly?

2 MR. POLLOCK: Well, you can't
3 answer with any degree of certainty with any
4 legal case.

5 MR. SKURJAT: Exactly, Mr.
6 Pollock, because we can't answer anything at
7 all with any degree of certainty in any legal
8 matter; what are we to do?

9 MR. POLLOCK: Well, you took
10 12 pickets, which according to you, wasn't a
11 bad deal.

12 MR. SKURJAT: It wasn't a bad
13 deal and I can say today, with a great degree of
14 certainty, it was a bad deal and we should
15 never have agreed to anything.

16 MR. WHITEHOUSE: We shall
17 never agree to any voluntary limitations in
18 the future.

19 MR. SKURJAT: You ask in
20 Peterborough if anybody will give you an example
21 of what was wrong with affidavits. First of
22 all, in order of motion, which I saw and I don't
23 have it with me, it was said that the strike
24 was illegal. This strike was not illegal.
25 Yet the company lawyer, who prepared the
26 affidavit, said that the strike was illegal
27 and there are other things that I can go on
28 and on and on and say what was not true or
29 what was half true on these affidavits. We
30 still - to date - didn't get an opportunity



1 to prove that the affidavits were wrong and I
2 don't think we will ever have that chance.

3 MR. POLLOCK: But you had
4 the opportunity at one time and you chose
5 - for your reason - all right, and you didn't
6 think you could do any better, 12 pickets,
7 that's all right. You had that opportunity;
8 you gave it away or sacrificed the opportunity
9 for some other reason; it's the same, you
10 settle for something you are sure of rather
11 than take something you weren't sure of.

12 MR. WATSON: Well, I think
13 what they did was they accepted the advice
14 of their legal counsel to accept 12 pickets
15 because he probably told them it was fairly
16 lenient in the view of their ordinary practice.

17 MR. POLLOCK: I think he is
18 probably right.

19 MR. SKURJAT: Well, that's the
20 way it was put to me "That a deal" and in our
21 experience we never saw anything better and
22 you can't get anywhere if you get injunctions
23 and you will never get anywhere anyway. This
24 is the cynical view of the legal profession
25 as well and we hear that in labour circles
26 and from those who have dealt with the situation
27 for years, that it is a completely cynical
28 approach. Now, if I may try to answer you with
29 regard to obstruction - and I am sure you are
30 talking about obstructions - it seems to me that

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1 whenever there is a strike, then the object
2 of the picket becomes, all of a sudden
3 a magic circle, or what have you, I don't
4 know how to describe them. I know that if
5 I drive my car out of the parking lot, I
6 wait until the people will thin down or
7 I will inch my way through. Now both in
8 the Tilco case and in Listowel, it seems
9 to me that employers feel it will be obstruction
10 if the pickets walk in front of their cars.
11 Who can stop, say, a two ton car? Who can
12 stop it? Surely not four girls.

13 Mr. Commissioner, I would
14 like to describe to you what is being done
15 by employers insituations like that to obtain
16 ex parte injunctions. In Peterborough, on
17 the 14th day of December, 1965, Harold Pammett
18 was on his premises before the picketing
19 commenced. The picket lines were arranged
20 by the entrances and driveways to the company
21 premises. When he saw the pickets were there,
22 he got into his car and backed it away from
23 the driveway and at great speed tried to run
24 the pickets down. They didn't jump so he
25 stopped with gravel flying all over the place
26 and saying, "That is what I was waiting for.
27 I am going to call the police". He didn't
28 try to inch through. He stopped 6 to 8 feet
29 away from the pickets and said "That is what
30 I was waiting for". It was planned from the



1 very beginning.

2 THE COMMISSIONER: And you
3 really fell into that trap that he set there?

4 MR. SKURJAT: You may say so,
5 but it was cynical and deliberate.

6 THE COMMISSIONER: You don't have
7 to emphasize that; I can quite understand
8 that.

9 MR. WATSON: I would hardly
10 call it a trap, Mr. Commissioner.

11 THE COMMISSIONER: But whatever
12 you want to call it, it was pretty much like
13 it.

14 MR. WATSON: I would say
15 that. Look, in these cases, we feel there
16 is an organized thing amongst the legal
17 profession and they know which lawyer to go
18 to in order to use influence to get an
19 injunction.

20 THE COMMISSIONER: I wouldn't
21 accept that and I think you are mistaken about
22 that because I have had more experience with
23 the judiciary than you have had.

24 MR. WATSON: Well, I wouldn't
25 argue that point, sir.

26 THE COMMISSIONER: I think
27 there is no doubt about it, Mr. Watson and
28 don't think that I am not sympathetic and
29 can't understand your position, because I
30 can.



1 MR. WATSON: Well, let me
2 finish what I was going to say. I know that
3 it doesn't sit very well with you, but this
4 is what we feel: that there are certain
5 lawyers who are very influential and know the
6 ropes as far as granting or getting injunctions
7 is concerned. Some of these anti-union
8 employers come to a certain point and then
9 decide that they are going to take the
10 union on, and part of taking the union on
11 is to refuse to bargain a decent settlement
12 with them, which is pretty difficult to deal
13 with and the second step is to get an injunction
14 in order to beat them and to get their employees
15 into work. Because they know very well that
16 if we have picket lines around a plant there
17 are a lot of employees who will not cross
18 that picket line. But if there are two
19 forlorn people at a gate like in Listowel,
20 then I am sure that this has not much effect
21 in trying to keep the employees out.

22 THE COMMISSIONER: Well, why
23 isn't it when you have 400 against 4. If
24 there are 400 men they won't go in and with
25 four they will? What is the reason? Now
26 what is there in the 400 that holds them back
27 which is not present in the four?

28 MR. WATSON: There are many
29 things. With some people, if their family
30 minister were on the picket line they wouldn't



1 go through or if some respected person in their
2 neighbourhood was there, they wouldn't go through.
3 But if it happened to be someone they probably
4 worked in some other section of the plant and
5 they said 'That so-and-so is out there
6 picketing and we'll just walk through without
7 any worry or concern". But if there are
8 a number of people there, there are a lot of
9 them who are their friends and it is evident
10 to them very forcibly that here they are walking
11 by their friends and they are taking over the
12 jobs and hurting the jobs of their friends.

13 THE COMMISSIONER: What is
14 the difference whether these 400 were at the
15 gate or across the road?

16 MR. WATSON: They can't be
17 across the road.

18 THE COMMISSIONER: Well, they
19 didn't have 400 but you had a house right
20 across the road in there at Tilco.

21 MR. WATSON: It was a trailer.
22 I am sorry. At the Tilco plant you said?

23 THE COMMISSIONER: There were
24 a number of these strikers.

25 MR. SKURJAT: But it didn't
26 help me any, Mr. Commissioner

27 THE COMMISSIONER: All I can
28 say is this. There may be two kinds of
29 influence. They may feel ashamed of it but
30 I don't think that is very effective when they



1 are willing to go in after the injunction has
2 been granted. It may be fear.

3 Now, there is no doubt at all
4 that the presence of 400 men, who think that
5 you are stealing their jobs and who can
6 present a rather formidable aspect.

7 MR. CLARK: Well, in answer
8 to your remarks, sir, as to the difference
9 of whether they are at the gate or across
10 the road - if you ever saw a carload of scabs
11 with the windows all steamed up and they
12 can't see further than two feet, and if our
13 pickets are across the road, they wouldn't
14 see them if they went into the company.

15 MR. POLLOCK: Of course, they
16 are not interested.

17 MR. CLARK: But we don't know
18 this, Mr. Pollock.

19 MR. POLLOCK: They are in that
20 car with the windows steamed up.

21 MR. CLARK: Because the car is load-
22 ed, the boss has taken eight in a sedan that/ six.
holds

23 MR. POLLOCK: Because they
24 don't want to see those people. They know
25 there is a strike on and if what your brief
26 says - Pammett phoned them up and said to
27 them "We've got a strike on and if you'd like
28 a job, "and they came down on that basis."

29 MR. CLARK: Mr. Pollock, with
30 respect, you know and the Commission knows that



1 the union time in and time out, the company
2 calls the workers in their home, "Come on down,
3 we've got a job for you". The worker goes
4 in the first morning and whether there is an
5 injunction or not, then he finds that he has
6 been duped, he has been sucked into coming
7 into the plant and really the job belongs to
8 somebody else and he comes out and says "I am
9 not working there" and we've had them join
10 our ranks by numbers this way. So don't
11 say they know what they are coming to. He
12 tells them lies over the telephone.

13 MR. POLLOCK: Well, let's
14 take Peterborough. For the first three days
15 there was no restriction on picketing. That
16 is the 14th, 15th and 16th.

17 MR. CLARK: That is right.

18 MR. POLLOCK: So that people
19 went to work on those three days.

20 MR. CLARK: And people quit.

21 MR. SKURJAT: And no strike
22 breakers were employed during those three days.
23 There were some scabs. Now I wouldn't argue
24 so much. I have had differences with my
25 colleagues on this. I would say that we
26 have different definitions of scabs and
27 strike breakers and I am sure you know the
28 difference. Now, if a scab goes in after
29 I talk to him - he goes in - well he goes.
30 He hasn't taken my job away from me. But what



1 about a strike breaker? Pammett in Peterborough
2 said that the strike was finished; it wasn't
3 legal; he got an injunction. And who knows
4 what an injunction is? Now today more people
5 are aware of what injunctions really are and
6 until Peterborough, if you asked anybody on
7 the street what an injunction was, he would
8 say "I don't know". They call them
9 injunctions and everything like that.

10 THE COMMISSIONER: That is
11 true in Peterborough but in other places
12 they know all about it as you know, now.

13 MR. SKURJAT: Now we know,
14 yes, but how many union representatives
15 even knew what an injunction was?

16 MR. POLLOCK: Well, you
17 haven't been reading your material for the
18 last 20 years because you've been complaining
19 about it. You haven't done your homework,
20 Mr. Skurjat.

21 MR. SKURJAT: Well, maybe
22 people know what an injunction means. Maybe
23 even lawyers don't even know to what an
24 extent a court order issuing an injunction
25 would imply. And people don't know about
26 injunctions and Pammett was saying in Peterborough
27 an injunction was a court order that he got
28 backing him and that was enough for some to
29 say "Well, the union did something wrong." The
30 union isn't even named in the injunction. They



1 are individuals only.

2 THE COMMISSIONER: Well,
3 gentlemen, we are looking forward to seeing
4 what can be done to remedy a situation like
5 that. What would you say if you did away
6 with all picketing and all strike breaking?

7 MR. WATSON: That would be
8 fine. You do away with picketing and strike
9 breaking. I would say, not completely, you
10 would have to have some semblance of a picket
11 line, unless you were to say that you do away
12 with all picketing and all operation.

13 THE COMMISSIONER: No, if you
14 can't control your own men, you see a thing
15 like that would depend upon the solidarity
16 of your own group but if you can't control
17 your own group, you can't complain of other
18 action.

19 MR. CLARK: That is quite
20 right.

21 MR. WATSON: But there should
22 be some limited ----

23 THE COMMISSIONER: If you
24 have a well organized group and I think that
25 is the one fact that you have to look at and
26 face, your strength. And I would be the
27 last person to suggest that the organization
28 of workers hasn't been of vital importance
29 to the progress of our society. It has been.
30 I think the criticism that is legitimately

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1 made is that for some reason or other you
2 haven't succeeded in bringing the cohesion
3 to your organization. But if you do have
4 that cohesion and if you strike even a plant
5 of that size and you have the majority of
6 people with you and you may have two or
7 three out but they don't affect the operation
8 of the plant. If you go out and there is
9 no strike breaking permitted, that plant
10 stops production, for every substantial
11 purpose.

12 MR. SKURJAT: But who is
13 going to police it in this case? How would
14 we know that it is respected by the other
15 side?

16 MR. CLARK: I think sir, with
17 respect, that your version would be very
18 acceptable if the union, for instance, would
19 have one person standing by the side of the
20 driveway to observe who is going in or who
21 is going out. This would be enough for
22 the union.

23 THE COMMISSIONER: I would say
24 that that would be a very proper procedure.

25 MR. CLARK: And to notify
26 other unions, of course, that we have a strike
27 here and I would be willing to think that is
28 acceptable.

29 MR. WHITEHOUSE: Are you
30 suggesting, Mr. Commissioner, that this would



1 entail a formula to guarantee the job of the
2 person who went on strike?

3 THE COMMISSIONER: Well, you
4 continue to be employees, not withstanding
5 the fact that you are striking. I don't think
6 you appreciate that fact. Because it says
7 you cannot divest a worker of that employee
8 relationship by reason of the fact that he
9 is not working.

10 MR. WHITEHOUSE: So that
11 Mr. Pammett is entirely wrong when he said -
12 or Mr. Pollock said he would never hire more
13 than five of those employees back again?

14 THE COMMISSIONER: But this
15 is only a suggestion and I would like to know
16 what you think of it.

17 MR. POLLOCK: Mr. Pammett
18 is incorrect in his interpretation of the law.

19 MR. WATSON: I would agree,
20 Mr. Commissioner, that one of the things that
21 the elimination of strike breakers would allow
22 would be that there would be no one being hired
23 to take the place of the people on the picket
24 line. That, in itself ----

25 THE COMMISSIONER: But that
26 is what we mean.

27 MR. WATSON: I am saying that
28 this would be helpful in ensuring that the
29 people's jobs would be protected. It's the
30 strike breakers they hire to replace the ones

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1 that are out and this is the difficulty you
2 have.

3 THE COMMISSIONER: But isn't
4 that your chief difficulty? Metaphorically
5 you say "Here we stand; our hands are tied;
6 our feet are tied and we are helpless and we
7 see men going in there occupying our seats".

8 MR. WHITEHOUSE: Could I
9 ask Mr. Pollock a question and get this circle
10 back to his original point on bargaining in
11 good faith. If I interpret your remarks
12 correctly as stated by the Star of April 7th
13 in Peterborough, they quote you - well they
14 don't quote you - but they say "besides, he
15 added, no one as yet has been able to explain
16 to the Commission just what bargaining in
17 good faith really means". Now Section 12,
18 simply says "shall bargain in good faith".
19 Are you agreeing with us then, that the
20 Labour Relations Board doesn't know what
21 bargaining in good faith is and it is very
22 difficult to interpret section 12?

23 MR. POLLOCK: I think it is
24 extremely difficult to interpret but I think
25 that: as difficult as it is to interpret
26 it is much more difficult to define it. That
27 is for all purposes.

28 MR. WHITEHOUSE: Would you
29 agree that the term "bargaining in good faith"
30 in Section 12 is rather meaningless?



1 MR. POLLOCK: No, because I think
2 you can find areas that are clearly not good
3 faith bargaining.

4 MR. WHITEHOUSE: Well, we thought
5 Pammett's case was clearly an area of not
6 bargaining in good faith.

7 MR. POLLOCK: But there are
8 other cases, for example, the attitude
9 which is "take it or leave it" that is determined
10 not good faith bargaining or somebody saying
11 "You are asking for \$1.20 an hour and I will
12 give you 20 cents". That is not good faith
13 bargaining. But those are easy cases.

14 MR. SKURJAT: Well, would you
15 agree that if a person says "I will never sign
16 an agreement with the union" or he will say "I
17 will never have the union here" and that is
18 in the middle of a negotiation and would you
19 say that the person was bargaining in good faith?
20 He didn't say that to you, naturally.

21 MR. POLLOCK: Well, he has
22 already signed an agreement with you, hasn't he?

23 MR. SKURJAT: I know, but
24 this is almost.

25 MR. POLLOCK: When he offered
26 you \$15 for retroactivity and you said "I will
27 take it", you might have had it then.

28 MR. SKURJAT: But he has
29 said repeatedly that he will never sign with
30 the union or he said "I will never have the



1 union here." Could you tell me, is that
2 negotiating in good faith?

3 MR. POLLOCK: Well, let me
4 ask you this. What you are saying is that
5 Mr. Pammett was not a very reasonable man.

6 MR. SKURJAT: I would say
7 that he wasn't bargaining in good faith.

8 MR. WHITEHOUSE: If we were
9 saying that we would be much more profound
10 about it.

11 MR. POLLOCK: Well, let me
12 ask you how your suggestions would have had
13 any effect in those circumstances where you
14 suggest that there ought to be power to get
15 this fellow back to the bargaining table.

16 MR. WHITEHOUSE: I would say
17 this, that as far as that particular section
18 is concerned, that there are going to be
19 occasions where this will not work but there
20 are also occasions where an agent has been
21 required to bring the parties back. People
22 stand up to him on principle and he must make
23 the first move and this one has to make the
24 first move, but you can't talk on the same
25 principle as the United Nations, you can't
26 talk unless you are sitting around the bargaining
27 table. I thought in this recommendation
28 at least we would be brought back to look
29 at each other and the instrumentality is
30 there for discussions. It isn't any guarantee,



1 of course, as you say, but it would be productive.

2 MR. POLLOCK: You could be
3 certain in this particular case that you could
4 sit and bargain until you turn blue and nothing
5 would happen.

6 THE COMMISSIONER: Did the
7 Board give reasons when it refused to find
8 him guilty of not acting in good faith? Did
9 they give reasons?

10 MR. SKURJAT: Well, the board
11 found there was not enough evidence to grant
12 leave to prosecute.

13 THE COMMISSIONER: But didn't
14 you make an application on the penalty imposed
15 against him for not negotiating in good faith?

16 MR. SKURJAT: Well, we
17 applied for permission to prosecute the company
18 - the Tilco company - and the board refused
19 to grant the permission.

20 THE COMMISSIONER: Did they
21 give a reason?

22 MR. SKURJAT: Yes, they gave
23 the reason - it was very highly legal and
24 technical, you know, and I really didn't
25 understand the reason.

26 MR. POLLOCK: Well, you must
27 have just read the last page where it said
28 you lost the meeting and you didn't like it.

29 MR. WHITEHOUSE: If I can say
30 again, Mr. Commissioner, if I can recall - again



1 I haven't got the document - and this is where
2 we suggest it might be fruitful for you to
3 look at the evidence we presented there and
4 their decision rejecting our application for
5 the right to prosecute, but if I were asked
6 to make a comment on this, I would say the
7 point the board really hinged its decision on -
8 and I stand to be corrected because it is
9 simply from memory at the moment - it was was
10 the mere fact that Mr. Pammett said that he
11 would be prepared to rehire five people
12 constituted evidence of bargaining in good
13 faith - that it was this kind of technicality
14 that he made the gesture that he would take
15 five back, something of this technical nature.

16 MR. SKURJAT: The board based
17 this on one meeting only and maybe our presentation
18 was also based on this one meeting. On that
19 basis the board went along without so many
20 things but it did refuse to grant permission
21 to prosecute.

22 MR. WATSON: I think it might
23 have been easier to get permission to prosecute
24 if the Act was strengthened and that is why
25 we say section 12 should be strengthened.
26 Certainly, that is a case in point.

27 MR. POLLOCK: I have read the
28 story of the Tilco Plastics in Peterborough -
29 probably a conservative estimate is forty times -
30 in different briefs, and some of them don't run

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1 with the others. Even the union ones don't
2 all run together. Now we've got the horse's
3 mouth before us and I would like to find out
4 and I think it opened with the comment that
5 Mr. Skurjat made that those strike breakers
6 were engaged before the injunction was in
7 effect. Is that right?

8 MR. SKURJAT: That is correct,
9 to my knowledge. Now, to my knowledge, Mr.
10 Clark was there, and to my knowledge there
11 were no strike breakers engaged during the
12 first three days.

13 MR. POLLOCK: During the
14 first three days? Then all the strike breakers
15 - or substantial numbers - were engaged during
16 the ex parte injunction when you had no pickets
17 which was Saturday.

18 MR. SKURJAT: It was mainly
19 Monday and quite a number of them..

20 MR. CLARK: Well, I was there,
21 Mr. Pollock, if I may. Friday afternoon,
22 Saturday and Sunday, Mr. Pammett was on the
23 telephone to various people, relatives - and
24 Peterborough is not that big a city and they
25 have relatives and relatives and relatives. His
26 plea was that "Monday morning, I am opening my
27 plant and now that I have the injunction, there
28 will be no interference from any strikers or
29 anything else. You are free to come into the
30 plant". And on Monday morning he had himself



1 carloads of new, completely new people, who had
2 never worked there before. As a matter of
3 fact, he even brought in a girl he had fired
4 five months before or six months before - he
5 rehired her.

6 MR. POLLOCK: So he saw
7 the error of his ways?

8 MR. CLARK: He suddenly found
9 himself a gold mine.

10 MR. SKURJAT: They were
11 carried by employer's cars, Mr. Pammett's and
12 others. There was no opportunity. He
13 didn't even say "We are still on a legal
14 strike despite the injunction or anything
15 else". We were never afforded the opportunity
16 to say anything because they just went through
17 the picket line and I am sure you know from
18 the evidence in Peterborough Magistrate's Court
19 of the trouble.

20 MR. POLLOCK: Well, I don't
21 think that you are deluding yourself and
22 perhaps you are deluding yourself if you feel
23 that telling those people in the cars simply
24 that you are on strike "Don't cross", that they
25 couldn't cross. I think some people can
26 be persuaded but I don't think that these
27 people that were called up - they knew of the
28 strike and they knew someone else had been
29 working there and that the place was on strike.
30 They were told "When I get my injunction, there

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1 won't be any problem" and I am paraphrasing
2 what you said, Mr. Clark, "come to work" and
3 they went through. Even on the day that the
4 large demonstration occurred - and there again
5 the estimates go from 200 to 400 - whatever
6 there were, the people still came to work.
7 They went in ----

8 MR. SKURJAT: But they were
9 in cars already. Now we have six and maybe
10 out of the six one was sympathetic and she
11 was already in the car. He is not going
12 to stop and let her out, so she is a captive
13 and she went in.

14 MR. POLLOCK: But she goes
15 home at night and she might not go back and
16 some of those people didn't go back.

17 MR. CLARK: Well, let me say
18 this, Mr. Pollock, in rebuttal. That is not
19 how it works. For example, a very sober
20 trade unionist in Peterborough, in the Outboard
21 Marine plant, his son went to work there, his
22 own son, sixteen years of age, who really and
23 truly hadn't grown mature enough to understand
24 the difference. When his father found out
25 at 5:00 o'clock at night that he was working
26 at Tilco, I can assure you, his son got the
27 best lesson he had in a long time. But this
28 is to rebut your argument; they just don't
29 understand. They think that with this
30 injunction it nullifies the union and there isn't



1 a strike anymore and they are free to do what
2 they like.

3 MR. POLLOCK: But your
4 argument would seem to gain in stature if
5 those people who went to work and then quit
6 and other new people came in - but there was
7 some turnover, but the core of people that
8 went in to work there almost from the first,
9 remained.

10 MR. CLARK: No, no, with respect,
11 Mr. Pollock, you see we are talking about a
12 real small number of people, something like
13 17 or 18 strike breakers, if you want to use
14 that term to define them from scabs. Out
15 of the 16 or 17, I would say that in the short
16 space of that strike, it might have revolved
17 two times. There might have been a complete
18 change twice - or maybe going into the third
19 round. His scabs stayed with him; that is
20 the scabs who stayed in the plant. But the
21 ones who were hired, when we found out where
22 they lived and went to their homes and talked
23 to them and explained the problem, some joined
24 the picket line, some quit going into work
25 and then they would replace them and he had
26 a pretty good turnover. So much so that
27 he was screaming at our President one day
28 and he said "I have got the lousiest bunch
29 because you don't let them stay long enough
30 to get experience".



1 MR. SKURJAT: Well, I think
2 in answer to your question, once a person
3 makes a decision, right or wrong, they want
4 to justify it, like getting into cold water.
5 Now I am in, it is not so bad, but you will
6 appreciate this point, Mr. Pollock, I am
7 sure. If a person went in and said "I am
8 in, so I am in". Many times that person
9 possibly, if talked to at the very first,
10 would be sympathetic and it would give some
11 support and he would say then "Well, I went
12 in, how are they going to consider me now" .
13 This is the point.

14 MR. POLLOCK: Well, they
15 consider you probably stronger if you are
16 talking about this person going in and finding
17 out about it and saying "I didn't know about
18 it, I am coming out".

19 MR. SKURJAT: But the decision
20 has been made and don't we all tend to stick
21 to the decision sometimes - you know, when we
22 have made them, right or wrong? And this
23 is the point.

24 MR. WATSON: People are
25 different. But one thing I would like to
26 bring to your attention. You were saying
27 there is no difference from the 200 to 400
28 people who were demonstrating and the people
29 still went in. I would like to point out that
30 the 200 to 400 didn't try to interrogate or



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1 dissuade anybody from going in. They were
2 there for another purpose.

3 MR. POLLOCK: Talking to people
4 from all sides about the Peterborough situation
5 and seeing movies, and also television shows,
6 and there were conversations and discussions
7 at the gate as the cars went through. There
8 were shouts.

9 MR. WATSON: Were these
10 demonstrators?

11 MR. POLLOCK: Yes, they must
12 have been because there was this one place
13 that showed a fellow with a white Stetson
14 hat and I don't know what his name was but
15 he was there and he wasn't one of the Tilco
16 pickets. I don't know what he was saying.

17 MR. WATSON: Was he talking
18 to one of the strike breakers?

19 MR. CLARK: He might have
20 been yelling to someone across the road too,
21 Mr. Pollock.

22 MR. POLLOCK: He might have
23 been home in bed which would probably be better
24 for him too.

25 MR. WHITEHOUSE: I might make
26 this point that hasn't been made before and
27 there was one picture of Mr. Pammett struggling
28 through a crowd of pickets with signs. This
29 was taken, I believe, inside a drug store and
30 Pammett went in and said he was going to get

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1 himself some cigars and he was going to go
2 through that line and get himself some cigars
3 and I believe he had an altercation with the
4 police about trying to do this and it would
5 seem to us that this is a direct attempt at
6 provocation. There really is no need to push
7 your way through 200 people to get a box of
8 cigars from across the road. This is the
9 kind of thing that you face and in my opinion
10 this was sheer provocation.

11 MR. POLLOCK: Well, it may
12 well have been and I would be the last person
13 to try and justify any of that type of activity.
14 We are not taking a vote as to who is popular
15 and who isn't and who ought to have done
16 something else. We are trying to find out
17 the realities of the situation, what are
18 the elements, what are the important ones
19 and what are the by-products and how do these
20 things work, how does the strike really operate
21 in an actual situation and this is why we
22 are probing all these things. I may seem
23 naive in some of the questions I ask but
24 I understand some of these things.

25 MR. WATSON: Well strikes
26 operate differently depending on the operation.
27 For instance, the strike in Peterborough
28 operated a lot differently than the one in
29 Listowel and you get a strike such as Hamilton
30 at the Stelco plant and in Hamilton they don't



1 have to worry about pickets. The plant just
2 shuts down and the company can't operate because
3 of the physical set-up and the fact that they
4 are not going to have enough employees and
5 they have to have a pretty substantial work
6 force.

7 Now this, you see, is just a
8 state of more or less seizure. The plant
9 shuts down and the employees are without their
10 wages and the company is without their production.

11 THE COMMISSIONER: Well,
12 that is the object of it.

13 MR. WATSON: Yes and you see
14 our objective is, in a strike, it is to shut
15 down the company production and in order to
16 get a bargain, then we already have. So
17 our people are trading off their wages and
18 living on a pretty low standard of living
19 during that time. On the other side, the
20 company is losing profits and not filling
21 orders or maybe have some other company fill
22 them for them or maybe the other company
23 has taken away their orders. So this is
24 a state of siege between them and it is a
25 real war between the two sides as to which
26 is going to give in and usually they come
27 to a compromise and where you have violence
28 or any kind of thing like that on a picket
29 line, is where the company tries to bring
30 in strike breakers usually, and they run them



1 through the picket lines by various methods.

2 THE COMMISSIONER: Well,
3 that really is the black beast in this conflict,
4 the strike breaker.

5 MR. WATSON: That is right.

6 MR. WHITEHOUSE: Could I
7 make a distinction here which I believe is
8 valid and I am sure you understand it. There
9 is the kinds of industries and the kinds of
10 employees we have to unionize, it is our
11 contention and I think this is the sort of
12 theme that runs through our presentation today
13 that in this particular industry, given an
14 employer that really wants to oppose the union
15 and does not want to establish a collective
16 bargaining relationship, given this attitude
17 and given a replaceable work force, that is
18 one that is not tied to a high skill ---

19 THE COMMISSIONER: And not
20 too many of them.

21 MR. WHITEHOUSE: And given
22 a supply of that labour, then the right to
23 establish a trade union effectively and the
24 right to have a collective agreement is quite
25 frequently circumscribed. In other words
26 your collective bargaining rights are denied
27 if given these conditions to large groups
28 of people that we have responsibility for.
29 And this is the point we are trying to make
30 and I am sure you are aware of this.



1 MR. POLLOCK: You make it
2 very well in the illustration you put forth
3 now and also the one in the brief, but the
4 weakness of your bargaining position is the
5 lack of economic strength which is something
6 that is inherent in the strike weapon. You
7 have to be economically strong to win a
8 strike. If the employer is stronger than you
9 economically and he can wait it out, then
10 you are dead. If you can close his plant
11 and wait longer than he can, then you win.

12 MR. WATSON: That is 100
13 per cent true.

14 MR. POLLOCK: So far, our
15 legislation, as I understand the operation
16 of the American and the Canadian scheme of
17 labour legislation, it provides - or has
18 nothing to do with the relative strength of
19 the parties. The legislation takes them as
20 they find them with this one exception, that
21 instead of having the fight for recognition
22 originally to get this fellow to the bargaining
23 table by using the same weapons that you have
24 now, the actual fights and the pickets and
25 the wars that they used to have in the thirties,
26 the Labour Relation Board says "Get me a
27 majority of people to sign their names
28 to this thing and I will give you a piece
29 of paper with a big red seal and you can go
30 to your employer and he is compelled by law

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1 to sit down and talk to you. Now, he is not
2 compelled to listen to you and he is not
3 compelled to agree with you. If you can't
4 get him to sign an agreement, then you still
5 resort to the old weapon of striking. If
6 you are economically strong you will wipe
7 him out and if you are economically weak,
8 you will lose your strike. He appreciates
9 that and you appreciate that. Now the question
10 is the realization of when you say to him,
11 "I will go on strike" and he may think you
12 are stronger than you really are and in some
13 cases you may think that you are stronger than
14 you really are. But once you get to the
15 strike line, the thinking is over, both parties
16 can look and see "Can I get along without
17 him? Yes I can". The Toronto newspapers
18 had that experience and that is the whole
19 question.

20 Now how does the government -if this
21 is what you are asking - how does the government
22 step in to now bolster up a weak party. You
23 can have weak employers and they can't stand
24 a one day strike or you can have a weak union
25 that can't stand to be on strike for two years
26 and nothing would happen.

27 Now, how do you differentiate
28 between who is right and when you step in to
29 bolster them up or when you don't?

30 MR. SKURJAT: Well, the problem



1 is when the injunction appears.

2 MR. POLLOCK: Well, we have
3 talked about injunctions before. I would like
4 Mr. Whitehead to answer this.

5 MR. WHITEHOUSE: I was not
6 about to be profound. You really made the
7 point. I think this balance of social and
8 economic situation is an important function
9 of the law, but what I was about to say was
10 that we will accept our situation and we
11 will accept the differential in economic
12 power, but don't tie our hands and feet
13 with the injunction so that that balance
14 of power is swung completely onto the side
15 of the employer. And I think this is
16 precisely what the injunction did in Tilco
17 as per Pammett's statement that we have quoted,
18 that without the injunction we would have had
19 him.

20 MR. POLLOCK: Well, you agree
21 with him in some things he says.

22 MR. WHITEHOUSE: And it is
23 the Listowel situation, it is the tipping of
24 the social and economic balance entirely in
25 the favour of the employer, given the circumstances
26 in our position that we are so concerned about ----

27 MR. POLLOCK: Well, let me
28 return to that question. If the withdrawal
29 or if the strike is the withdrawal of labour
30 and if the success of those other areas in



1 economic strength of the union is that they can
2 withdraw a large number of people who can't
3 be replaced, or/^ahighly skilled unit which
4 can't be replaced, that is your economic
5 strength. They don't have to picket at all
6 and they can go home and that is the end of it.

7 Now, in your situation, where
8 people can be replaced, that weapon is more
9 realistic to the employer, he can use it and
10 the other weapon - and believe me if Stelco
11 could find 600 people to take those jobs, they
12 would take them - so it is a question of
13 reality of the situation.

14 In the Tilco situation, you have
15 a replaceable work force and then you have
16 to say "Well, all right, we are not economically
17 strong as our brothers in Hamilton are, we
18 have to prevent, somehow, the replacement of
19 our people when they are on strike". So you
20 take or you persuade them and say "Don't go
21 in our plant because we are on strike". Then
22 you eliminate some people who are trade union
23 people and are committed to this feeling and
24 they won't go in there. You also appeal to
25 other people who just feel that it is not
26 just to steal somebody else's job or you may
27 communicate the information that he is not a
28 very nice man to work for and that kind of
29 thing. All right, you still don't succeed
30 at that level and there are still people who

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1 prepared to go in there and work.

2 The next question is "What will
3 our society grant you in your arsenal to
4 prevent or dissuade those people from coming
5 across". Clearly they won't let you beat
6 them up. Clearly they won't let you keep
7 them by fear, that they are afraid of getting
8 beat up and further, you can't physically
9 stop them and prevent them and hold them back,
10 even if you don't hurt them. You can't do
11 those things now. So what is left to you
12 other than to tell them what your story is
13 if you can't do those other things.

14 MR. WHITEHOUSE: Well, of
15 course, you are looking at the solution as
16 a commissioner. Even the telling of the
17 story is not available to us on an ex parte
18 injunction because they hardly know who the
19 new striker is. He is probably quite unaware
20 of the situation and we can't educate him.
21 It may not even be a matter of intimidation.
22 It may be a matter of getting to the person
23 before you know who he is. The answer, of
24 course, is that you have already stated the
25 case that probably the highly skilled,
26 irreplaceable craftsman is perhaps not so
27 much concerned as we are so that really, you
28 are looking at this - I would suggest - perhaps
29 even a small majority group of industrial
30 workers who need these changes in legislation

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1 to provide them the right of collective bargaining
2 as is specified in the Labour Relations Act and
3 I think that if we could really get to the
4 position where strike breaking is frowned upon
5 by the law - let us put it this way - where
6 the jobs are secure to the worker who comes
7 out and it is an economic battle between the
8 loss of wages of the employee and the loss
9 of profits to the employer, because the
10 employer - and let us not fool ourselves -
11 is not entirely without income so I will not
12 deal with that, but the employee has strike
13 relief because you and I know that that is
14 an infinitesimal part of a normal salary and
15 certainly not enough to get to Florida on.
16 So it should be a purely economic struggle
17 between loss of earnings on the part of the
18 employee and loss of profit on the part of
19 the employer. And the legislation ought to
20 remove all the other obstacles that make
21 ^{an} this/unequal battle in those terms and I
22 think this is the kind of principle we are
23 trying to state in that brief.

24 MR. POLLOCK: Well, I think
25 you make the point very well. One comment
26 I would ask about in that last statement of
27 yours; you said strike breaking ought to be
28 against the law. If you can get the people
29 in this province - and I don't know why, perhaps
30 you don't either and this may be all of our



1 problem - why the people in this province
2 don't abhor strike breaking as much as they
3 do in other countries. Maybe your general
4 educational factors of the trade union and
5 maybe that is something you have to do and
6 maybe that would increase the support that
7 striking people get from the general community
8 because of some educational points.

9 MR. WHITEHOUSE: With all
10 due respect, Mr. Pollock, I have an Old
11 Country background of 25 years ago and I have
12 now been here 18 years and I would suggest to
13 you that the social and political climate
14 of North America makes it a rather raw society
15 which I regret. There isn't the acceptance
16 of the trade union movement, generally speaking,
17 I would say, in industry in North America
18 as there is in a more mature society and I
19 believe that will only progress in terms
20 of the kind of legislation undoubtedly Mr.
21 Rand is thinking of, when you establish a
22 maturity that accepts each other and where
23 the employer accepts the union movement and
24 bargaining. You've been to Australia and
25 I think there is some legislation that makes
26 union membership compulsory under certain
27 circumstances?

28 MR. POLLOCK: Yes, under
29 some circumstances, but it is not very
30 significant. It runs probably the same degree



1 as our closed shop.

2 MR. WHITEHOUSE: But most
3 certainly in the operation of society and
4 in various areas of society I believe there
5 is much more acceptance of the working class
6 movement of the trade union movement in these
7 other societies rather than in North America.
8 It still seems to me to be a rather raw point.

9 THE COMMISSIONER: Well, I
10 think there is some suggestion made that
11 you are responsible yourselves for organizing
12 the unorganized because you have really acted -
13 at least it has been reported that you have
14 acted in a manner that repels some groups.

15 MR. WHITEHOUSE: Well, we
16 wouldn't accept that.

17 THE COMMISSIONER: What do
18 you mean you won't accept it?

19 MR. WHITEHOUSE: We wouldn't
20 accept it.

21 THE COMMISSIONER: It doesn't
22 impress me that you say you wouldn't accept it.
23 The question isn't whether you would accept it
24 or reject it, the question is whether it is
25 fact or not, and I would say that in North
26 America, in the United States, and we follow
27 the United States, there has been a reputation
28 raised by some of the organizations of labour
29 that has given it a bad name. There have been
30 performances in strikes that have given labour



1 a bad name, a badge of things that great numbers
2 of people are repelled by and it seems to me
3 and I think your weakness is in your failure
4 of a broader organization and a cohesion in
5 that organization that wouldn't permit people
6 to deter the union obligation by what you call
7 a scab or to injure your action by what you
8 call a strike breaker.

9 In Australia those things
10 are not considered. Why not? Because
11 there is a depth of taking things for granted
12 that won't permit it.

13 MR. WHITEHOUSE: I would say,
14 Mr. Commissioner, that the reaction of the
15 automobile manufacturers and the original
16 organizations of the Ford workers wouldn't
17 show a degree of maturity by the corporation
18 in those days, as you personally know.

19 THE COMMISSIONER: I don't see
20 that the corporations are any more mature
21 than you are. I don't say "you" - you can
22 take it as a whole.

23 MR. WHITEHOUSE: This is
24 precisely my point and when I say it is
25 a rawness of society, which I regret.

26 THE COMMISSIONER: But on the
27 other hand, the fact is that some of the
28 performances have repelled some of the groups.
29 Now you realize that you can't make much
30 progress with 26 per cent of the workers



1 organized. That is of the working class being
2 organized. You've got to have more than that
3 or you are not going to achieve that independence
4 by resorting to measures that are repellent.
5 If you are strong enough you don't have to
6 resort to that sort of thing.

7 MR. CLARK: With respect, Mr.
8 Commissioner, I am an organizer and the day
9 you people can stop employers from threatening
10 the very jobs that the Italian people in
11 this city and the foreign workers that don't
12 even begin to understand the laws that we
13 have got, we'll organize the textile industries,
14 sir.

15 THE COMMISSIONER: I didn't
16 quite understand your first statement.

17 MR. CLARK: You say we have
18 to organize more than 26 per cent of our
19 industry. As a union, we would love to
20 but when we go to an Italian plant down here
21 on Queen Street or up here on Spadina Avenue
22 and we start to organize them, we get maybe
23 35 or 45 per cent of the girls signed up
24 and the boss calls a meeting inside and says
25 "The next one who joins the union is fired".

26 THE COMMISSIONER: Well, that
27 is prohibited by our law. Have you ever
28 tried to do anything else?

29 MR. CLARK: These people
30 are terrified.



1 THE COMMISSIONER: I suppose
2 they have come over?

3 MR. CLARK: Well, Mr. Commissioner,
4 I have had people in this city, this year, draw
5 their drapes when I have been in talking to
6 them about joining a union and the only reason
7 they draw their drapes is because they are
8 afraid that someone will see them talking to
9 a union organizer and report it to the company.
10 This is the land we are living in and we would
11 love to organize more, with respect.

12 MR. SKURJAT: During the
13 war I was a member of the underground in
14 Europe. Now organizing here takes me back
15 to underground activities and this is just
16 about the size of it. You don't openly
17 say that "I am organizing here" because if you
18 do, that is the end of your organizing. You
19 have to do it in an underhand manner and,
20 as Mr. Clark just said, I think it is terrible
21 in this society we have to resort to under-
22 ground tactics to organize free people.

23 THE COMMISSIONER: And the
24 same thing applies to those who aren't
25 foreigners, in that sense?

26 MR. CLARK: In some cases, yes,
27 sir. It depends on the amount of information
28 they have regarding our laws and how much
29 experience they have in the labour field but
30 you will find especially in Metropolitan areas



1 where there is a high degree of immigrated
2 people, that it is very shocking.

3 MR. WATSON: Mr. Commissioner,
4 I have had quite a bit of experience in
5 union movement, in organizing and it possibly
6 isn't as bad today as it used to be but I have
7 been in some small towns and we wouldn't even
8 dare to go near a hall because of the fact
9 that the employer would find out. And there
10 is a great deal of fear on the part of people
11 and the lower waged people, you would think
12 they wouldn't have to depend on that job and
13 they would be less fearful, but these are
14 the people who are more fearful. The people
15 who have better jobs are more inclined to say
16 "Well, I've got rights". For instance, the
17 difference in the law between Ontario and
18 Quebec and the security they have under the
19 Labour Relations Act, where the company
20 can fire them for union activity. In Ontario
21 you have to show and to prove the employer
22 fired this person for union activity. A
23 person could be fired and fired unjustly
24 and the boss can fire that person and say
25 "You are fired for being late six months ago.
26 You were late once six months ago". You've
27 got to prove that that person was fired for
28 union activity.

29 THE COMMISSIONER: Yes, but
30 he can't say you were late six months ago, all



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1 that has been waived.

2 MR. WATSON: Not in the society
3 that he works under. He has no regulations ----

4 THE COMMISSIONER: Well, isn't
5 that an arbitral fact, a dismissal?

6 MR. WATSON: Not unless you
7 have a contract. I am talking about getting
8 into basic organization. In Quebec, for
9 instance, if a person, during an organizing
10 campaign is fired for unjust reason - and it
11 doesn't have to be for union activity - then
12 the Labour Board will reinstate that person
13 with back pay. But in Ontario - and we have
14 had actual cases - people have been fired
15 for unjust reasons and so the boss admits
16 "Well, perhaps I didn't have reason to fire
17 them but I didn't fire him because of union
18 activity. I didn't even know he was in
19 the union" and so you lose the case. You
20 lose one case like that and your whole
21 campaign - the bottom drops out of it.

22 MR. POLLOCK: What do you
23 suggest?

24 MR. WATSON: I would suggest
25 if anybody is fired during a campaign to
26 organize a group of people and it is proven
27 he was fired unjustly, that the Board have
28 the power to reinstate them with back pay
29 and this would be a great deal of help. I
30 know in Quebec we get people reinstated and



1 in Ontario we don't. I remember one campaign
2 in Hamilton three years ago, a person was
3 fired and she was one of the best workers in
4 the shop and she was fired for union activity
5 because the boss felt that she started the
6 union, but she didn't start the union. The
7 boss thought she did and she wasn't reinstated.

8 MR. POLLOCK: But that
9 doesn't solve your problem in the example
10 you just gave, where the employer says
11 'I didn't even know she was in the union' and
12 it kills your organizational campaign. Reinstatement
13 certainly solved ^{the} / problem for the
14 individual who is discharged but again, on
15 those facts, even if they found that there
16 was an unfair labour practice the organizational
17 campaign would still be alive, wouldn't it?

18 MR. WATSON: But the point
19 is that they use this. For instance, we
20 have in the States the G.P. Stevens Company
21 and they are going to the Supreme Court this
22 fall or next to the Supreme Court and they
23 may not go to the Supreme Court. They have
24 never reinstated any of the employers but
25 the labour board has ordered them to reinstate
26 them. They have never reinstated them and
27 they are going to the next procedure. These
28 people, some of them were fired as long as
29 3 and 4 years ago. Now that campaign fell
30 on its face. There were about 60 thousand



1 G.P. Stevens employees not organized and a
2 very dramatic example in the south where the
3 south isn't organized and he will keep on
4 doing that until someone puts a stop to his
5 actions. And the fear of employees, this
6 is what has been pointed out and this is
7 what I am saying, that there is a terrific
8 fear amongst employees that they are going
9 to lose their jobs if they join a union. And
10 if you can abolish that fear, in other words,
11 we are not saying that a person should not
12 be fired if they have reason to be fired but
13 if they are in an organizing campaign and
14 they are fired unjustly, then they should be
15 reinstated. And you shouldn't have to prove
16 they were fired for union activity in order
17 to get them reinstated. If they are fired
18 unjustly, reinstate them with back pay and
19 that will reinstate the confidence of the
20 other people. You leave that person out and
21 the boss can say as much as he wants if he
22 didn't know she was in the union, but those
23 people know damned well he does know she was
24 in the union.

25 MR. SKURJAT: How many
26 establishments are there - and this again
27 is low wage plants we are talking about because
28 unfortunately - or maybe fortunately - we do
29 represent employees whose wages are in the
30 main, very low, possibly the very bottom of

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1 totem pole. How many times an employer would
2 say to the employee "Well you bring in the union,
3 that will be the end. I will put the key in
4 and I'll close the plant".

5 MR. POLLOCK: That may be
6 true and in some cases they probably would
7 wipe him out if he had to pay reasonable
8 wages.

9 MR. WATSON: There haven't
10 been too many cases where they shut the plant
11 down. They always say it, however. We
12 would feel rather strange if they didn't say
13 that.

14 MR. WHITEHOUSE: I would like
15 to correct Mr. Pollock, if I could, and I know
16 you didn't mean it when you said "reasonable
17 wages". Our experience is that with relatively
18 fair wages you get a higher union cost of
19 production.

20 MR. POLLOCK: Well a lot of
21 people are in business competing perhaps
22 because they are second rate managers, or
23 something and the only way they can compete
24 is if they can employ people at cheaper rates
25 and if they have to bring them up to the same
26 standard as some other company, they probably
27 couldn't compete on that basis and they would
28 have to go out of business.

29 MR. WATSON: Maybe they
30 shouldn't be in business.



1 MR. POLLOCK: Well, that is a
2 good point.

3 MR. WATSON: I think that is
4 one of the responsibilities that management
5 has to take - that they are able to supply
6 a fair wage to people.

7 MR. POLLOCK: But that is
8 not much of an answer to the fellow who is
9 warned, in Mr. Skurjat's argument, that if
10 you get the union in I will close up my
11 plant and if that, in fact, does happen,
12 he is not getting his \$1.10 or whatever it is.

13 MR. SKURJAT: It is not
14 necessarily because of economics either.

15 THE COMMISSIONER: But you
16 might have a place with small industry and
17 they make a living there. If you were to
18 bring that under the standard of a city
19 you could drive the proprietor out of business.

20 MR. CLARK: Mr. Commissioner,
21 with respect, sir, the trend today is for
22 industry, very, very prosperous industries,
23 I might add, to move into the north. Not
24 to move there because of any reason for -
25 I mean Collingwood and Midland, in around there -
26 they move there because they think that they will
27 take advantage of your argument.

28 THE COMMISSIONER: Well, the
29 cost of living might be less.

30 MR. CLARK: But it doesn't

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1 remain that way.

2 THE COMMISSIONER: That is
3 true, then wages go up.

4 MR. CLARK: But why should
5 an employer move into an area simply to get
6 cheap wages?

7 THE COMMISSIONER: I am not
8 thinking of an employer who did it for the
9 purpose of getting reduced costs. Take the
10 business that went into the linen business -
11 the textile business - of New England that
12 moved down to the southern States. There is
13 no doubt that they have in mind to escape
14 organized labour. I don't mean that at all.
15 I mean that if you have a business that has
16 gone on through generations and it is in
17 a small community and the community is more
18 or less one large family and I can quite
19 understand that the introduction of modern
20 methods are appropriate to a metropolis and
21 would cause difficulty there.

22 MR. CLARK: Well, he sells
23 his product, sir, into the metropolitan area.

24 THE COMMISSIONER: And the
25 only way he can do it is by paying the lower
26 wages.

27 MR. CLARK: No, with respect,
28 sir; we have a seat belt company in Midland
29 making automobile safety seat belts. When
30 we went there, they were paying \$1.05 or \$1.10,

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1 just over the Ontario minimum wage rate - the
2 same basic type of company is in Windsor
3 making the identical seat belt for the
4 automobile industry and they are paying
5 \$1.75 and \$1.85. Now what is the owner
6 of this plant in Midland doing with the
7 excess profit that he makes from paying
8 \$1.05 and \$1.10?

9 THE COMMISSIONER: Is it the
10 same degree of machine?

11 MR. CLARK: Yes, it was a
12 brand new, modern plant that he put in there.

13 THE COMMISSIONER: Well,
14 he could bring it in but I wasn't thinking
15 even of that.

16 MR. CLARK: He took advantage
17 of every one of the modern techniques.

18 THE COMMISSIONER: Well, I
19 was thinking instead of electric power you
20 have water power - the old mill turning around.

21 MR. CLARK: There are very
22 few of those left, sir. For instance, you
23 could run a grist mill with one and I wish
24 they did because you get better flour from it.

25 MR. POLLOCK: Perhaps I could
26 ask - not a question, but an undertaking. In
27 some of your liesure time you might consider
28 giving consideration to the drafting of the
29 definition of bargaining in good faith and
30 send it down to us. It might be of some



1 assistance.

2 THE COMMISSIONER: It seems to
3 me that it depends upon the nature of the
4 exchange. You ask him to deal with you -
5 to negotiate with you. You have certain
6 propositions to make to him. You have
7 something to say on wages and you have something
8 to say on conditions of employment and that
9 sort of thing and you give the reasons why
10 you think this ought to be changed or that
11 ought to be changed or why the wages should
12 be increased and you support that by the
13 considerations that are relative to it. I
14 would say that in order to act in good faith,
15 he must consider those grounds that you
16 urge seriously. Now if he does that and
17 tries to answer them, or confesses that he
18 can't answer them, then he is acting properly.
19 If he doesn't do that, then he isn't.

20 MR. WATSON: Well, I think
21 we will take Mr. Pollock up on the suggestion
22 but I would suggest also that the companies
23 - if the companies didn't have what we call
24 a union-busting tool - the injunction - they
25 might be more inclined to bargain in good
26 faith. That is, if they didn't have this
27 to fall back on. We think that this is
28 the most serious thing that poses our union
29 movement today.

30 THE COMMISSIONER: Well, I can't



1 say that I am sure that is right because I think
2 the real danger to you is the man who takes
3 your possession. And you may say that an
4 injunction opens the door and clears the way
5 but if they are willing to break it in your
6 absence, then they will, except through fear,
7 break it in your presence.

8 MR. WATSON: I don't think
9 it is a panacea for us, but we feel
10 it has worked against our best interest.

11 THE COMMISSIONER: In some cases
12 it has.

13 MR. POLLOCK: In the past seven
14 years, 1958 to 1965, you have had 13 strikes
15 that are reported in the Carruther's study
16 and you have had two injunctions granted
17 against you, that is up to 1965.

18 MR. WATSON: Well, you see
19 what the trend is, Mr. Pollock, this all
20 developed in the last year or so.

21 MR. POLLOCK: But I want to
22 know - well you had one in 1958 and you had
23 one in 1965.

24 MR. WATSON: But what I am
25 saying is, in the last year or so, the trend
26 has been towards injunctions and it seems
27 to be a specialized thing.

28 MR. POLLOCK: Well, I don't
29 think that holds from the statistical analysis
30 but what I want to ask is what happened in the

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1 other disputes where there were no injunctions.

2 Did you win your dispute every time?

3 MR. WATSON: I would think
4 if you won a strike or not, you get some
5 compromise that provides you with an agreement
6 and I think some people probably in the
7 bargaining really felt they had lost and
8 other people thought they had won but at
9 least we come to some conclusion and all
10 we are saying is that we expect or try to
11 have a fair fight with the employer and
12 not have him have some weapon that he can
13 give or take unfair advantage of us.

14 THE COMMISSIONER: I think
15 the very vocabulary you use is not calculated
16 to make your negotiations any more pleasant.
17 You refer to people as if they were in some
18 sort of serious warfare and Walter Reuther
19 comes out with the greatest victory that
20 has ever been achieved.

21 MR. WATSON: Let me say
22 one thing - that some of the victories they
23 have achieved, if you want to call it that and
24 some of the battles they have been in to get
25 things, then when the new employee now starts
26 at Ford the company is saying "Now here are
27 some of the things that we are giving the
28 workers" and it maybe took them six month's
29 battle to get those concessions.

30 THE COMMISSIONER: I understand



1 that that is persistence, that is obvious, it
2 is like the big headlines in the paper; you
3 blow up things that are not worth blowing up
4 and the vocabulary you use.

5 MR. WATSON: Well, maybe
6 you are affected by the general thing that
7 goes on these days but in any event, we are
8 apt to think in terms of the strike as a
9 battle with the employer. It is a
10 last resort battle, let me assure you.

11 MR. CLARK: Mr. Pollock, did
12 I understand your question differently when
13 you said that we'd win or lose those disputes?

14 MR. POLLOCK: Well, you
15 say that the cause of the defeat in most
16 cases was the injunction. I just wanted to
17 say that in 11 cases, you didn't have
18 injunctions so you must have won.

19 MR. CLARK: Well we didn't
20 lose our bargaining rights. We either came
21 to an agreement or we were still in there.
22 Whether we got a little gain or a big one
23 we don't know.

24 MR. POLLOCK: But you settled
25 something. I don't think it was the
26 injunction that caused you to lose at Tilco.
27 I think perhaps even without the injunction
28 that Mr. Pammett might not have been too
29 reasonable.

30 MR. CLARK: I will reserve my

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1 comment about that.

2 MR. WATSON: I think that with
3 guys like Pammett we need all the support we
4 can get.

5 MR. CLARK: Well, Mr. Pammett
6 wants to live in the thirties.

7 MR. POLLOCK: Well, thank
8 you very much for appearing today, gentlemen.

9 This meeting is adjourned until
10 10:00 o'clock tomorrow morning.

11 ---Adjournment
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